No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

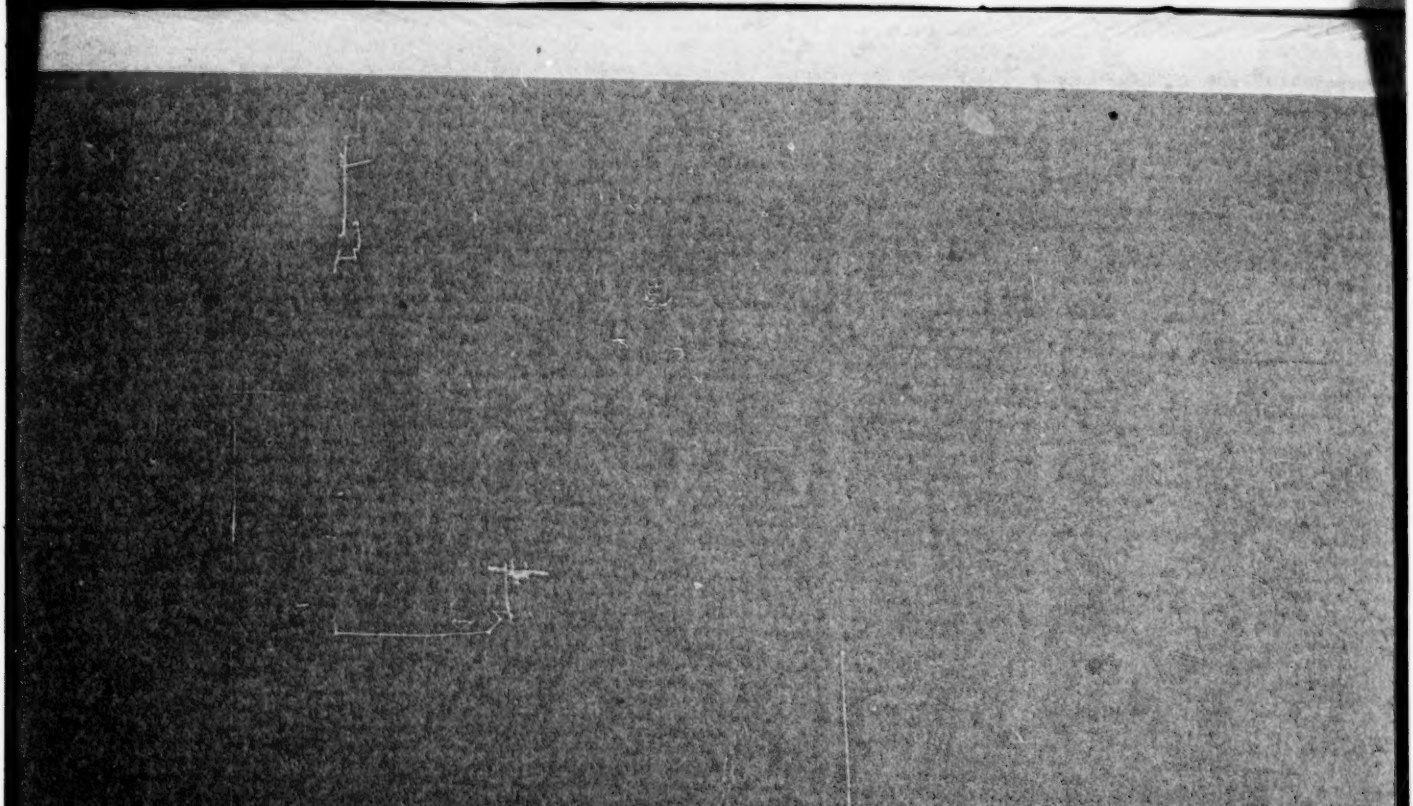
TESTIMONY.

VOL. III.

Pages 1057 to 1584, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.



ALBERT JEMISON, by consent of counsel, recalled as a witness for defendant.

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Jemison, you were a witness on the stand here the other day, were you not? A. Yes, sir.

Q. And did you testify before or after Mr. Bryan testified? A. I believe before.

Q. Mr. Bryan came on the stand immediately after you did, did he not? A. I believe so; yes, sir.

Q. At what hotel are you staying?

A. Why, we have been rooming over there in the Weinstein Block, and been eating up to the Cosmopolitan.

Q. Who has been in the party?

A. Why, in the party there has been Mr. Griswold, myself, Mr. Murtaugh, Mr. Tom Bryan, and for a while I believe Mr. Wells was in the crowd once or twice and eat up there, and a man by the name of Tom Halfway.

Q. Did you have some conversation at the table concerning the testimony given in this case on the evening upon which Mr. Bryan gave his testimony?

A. I believe we did.

Q. I wish you would state whether in the course of that conversation, referring to the testimony that you and Mr. Bryan had given, Mr. Griswold did not state, on or about the 16th of December at the table, that somebody would be likely to go to Deer Lodge yet by reason of the testimony given in this case?

A. I can't say positively about just how those words

(Testimony of Albert Jemison.)

were mentioned, but I believe I heard something like that mentioned.

Q. That was the substance of what was said, wasn't it?

Mr. MAYNARD.—Objected to; leading.

A. When we are out that way in a crowd, we are shooting off our mouths and we are talking so much in all joshing and joking ways, and I couldn't say just how that come up. I remember talking about it.

Q. I wish you would state whether Mr. Griswold on that occasion did or did not say that in substance.

A. I couldn't say to that; I remember hearing it said, though, but I don't believe that I could positively swear that Mr. Griswold said it but I can't say that he didn't.

Q. You may state whether on that occasion Mr. Griswold did not state that he had committed perjury in this case a number of times, and that he would do it again if it was necessary to win the case?

Mr. MAYNARD.—Objected to; leading and immaterial, and irrelevant to this issue.

A. Well, I believe I heard something about him saying something about perjury, but I just couldn't say whether he said it in that way or not.

Q. Mr. Jemison, you talked with Mr. Griswold a number of times, did you not, while he had his suit pending with Mr. Cobban about that matter?

A. Yes, sir. I talked to a number of people.

Q. Mr. Griswold, as I understood you, went up and got you up the Blackfoot somewhere and brought you

(Testimony of Albert Jemison.)

down, and you didn't know what the business was, whether it was upon his suit with Cobban or something else; is that correct?

A. I believe so, till after we got on the road a ways; yes, sir.

Q. I wish you would state whether, on that occasion at Missoula, at or about the time the suit was commenced or while it was pending, Mr. Griswold did not say to you in effect that if Mr. Cobban did not settle with him he would send him to the penitentiary?

Mr. MAYNARD.—Objected to; leading.

A. I just couldn't answer that positively. We had several talks.

(By Mr. BICKFORD.)

Q. Did you ever hear him say that?

Mr. MAYNARD.—I object to that question also as leading and as entirely incompetent, immaterial and irrelevant.

A. Well, I don't know. I believe I heard him say something similar to that, but I just couldn't say what it was, or I don't know that I could say that I knowed the meaning of it, either.

Cross-examination.

(By Mr. MAYNARD.)

Q. Let me ask you one question, Albert. From the beginning to the end of this matter, in any conversation that you ever had with Mr. Griswold relative to your testifying

(Testimony of Albert Jemison.)

before Mr. Zevely, or in going before the grand jury and testifying, or in coming here to testify, or in the civil suit which he had with Mr. Cobban when he was speaking to you about being a witness in that case or in any of these matters, did he at any time or in any place ever ask you to do anything except this, to testify to what you knew to be the truth, the whole truth, and nothing but the truth?

Mr. WALSH.—Objected to as not proper cross-examination of this witness, as not relating to the conversation inquired about in any way.

A. I believe he told me that, yes, sir.

The EXAMINER.—Let the stipulation be entered that upon my certificate his testimony will be taken as correct.

Mr. MAYNARD.—Waiving his signature.

Mr. WALSH.—Yes, sir.

The EXAMINER.—I think yesterday there were two or three questions asked him that have not yet been transcribed; as to them you will stipulate to the same effect, I suppose?

Mr. WALSH.—Yes, sir.

Foregoing testimony read by me and found to be correct.

HENRY N. BLAKE,
Examiner in Chancery.

February 13th, 1902, 2 o'clock P. M.

Hearing resumed.

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—I desire to offer in evidence six deeds as furnished by the county clerk and recorder of Deer Lodge county, Montana, the certificate being under his seal.

State of Montana,
County of Deer Lodge. } ss.

I, Phil Greenan, clerk and recorder in and for said county, do hereby certify the foregoing to be a full, true, and correct copy of warranty deed as the same appears of record in book 36, page 1, records of Deer Lodge county, Montana.

Witness my hand and official seal this 19 day of December, A. D. 1901.

[Seal] PHIL GREENAN,
County Clerk and Recorder.

By Mr. BICKFORD.—What deed is that, Mr. Maynard?

By Mr. MAYNARD.—That is one of the deeds from R. M. Cobban et al. to W. A. Clark.

By Mr. BICKFORD.—Well, that is all admitted, as I understand it, by the pleadings.

By Mr. MAYNARD.—There are one, two, three, four, five, six of these deeds.

By Mr. BICKFORD.—Yes, I think they should be chronologically arranged so as to correspond with the answer in the case.

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—Well, we couldn't do that.

By Mr. BICKFORD.—Yes, the answer takes them up in their chronological order, and they ought to be made to correspond, I think, with the answer.

By the EXAMINER.—I have numbered the other exhibits from 1 to 76.

By Mr. MAYNARD.—We now offer in evidence certified copies of deeds by the same officer as follows:

Edward D. Doney and Martha M. J. Doney, husband and wife to Robert M. Cobban; also deed of Charles Cloutier to Robert M. Cobban; also deed John Gilles to Robert M. Cobban; also deed Edward D. Doney and Martha M. J. Doney, husband and wife, to Robert M. Cobban; also deed of Harriet Bryan and Thomas B. Bryan, her husband, to Robert M. Cobban; also deed Guy W. Muchmore to Robert M. Cobban; also deed Elijah W. Hoyt and Charlotte S. Hoyt, his wife, to Robert M. Cobban; also deed A. F. Muchmore to Robert M. Cobban; also deed Oliver E. Muchmore and Elizabeth A. Muchmore, his wife, to Robert M. Cobban; also deed Nels Opsata to Robert M. Cobban—Nels O. Opsata and Birdie Opsata, his wife.

By Mr. WALSH.—We object to that for the reason that it does not appear that the deed or the copy of the deed offered in evidence purports to convey the land to the defendant in this case or any other person, and we make the objection generally to all the deeds offered in evidence for the reason that it does not appear from such deeds that the land itself was conveyed to the defendant; that will apply

(Testimony of Albert Jemison.)

to the deed of Elijah W. Hoyt and Charlotte S. Hoyt, his wife, Nels O. Opstata and Birdie Opstata, his wife, and Edward D. Doney and Martha M. J. Doney, his wife.

By Mr. MAYNARD.—What is the point, Mr. Walsh?

By Mr. WALSH.—The point is that it does not purport to convey the land—the deeds mentioned do not purport to convey the land mentioned therein to the defendant in this case or to anybody else.

By Mr. MAYNARD.—They make reservation—is that what you mean?

By Mr. WALSH.—I say they do not convey the land, and we object to the introduction of any of these deeds in evidence except such of them as purport to convey the land.

By Mr. MAYNARD.—And where the timber is sold simply you object?

By Mr. WALSH.—Those instruments we object to for the reason that there is no allegation in the bill of complaint that charges the sale of timber; the charge being that the land itself was conveyed.

By Mr. MAYNARD.—We also offer in evidence deed of W. F. Hughes and Minnie A. Hughes, his wife, to Robert M. Cobban; and also deed of Fred E. Cornish to Robert M. Cobban.

By Mr. WALSH.—We object to the deeds last mentioned and offered in evidence for the reason that the

(Testimony of Albert Jemison.)

parties therein named are not named in the bill of complaint, and that therefore it is irrelevant and immaterial to the issues in this case, and we further object to the introduction of said deeds in evidence in this case for the reason that it is not charged in the bill of complaint that any conveyance was made by F. E. Cornish to the defendant directly or indirectly or to anyone else, and there are no allegations in the bill of complaint charging any fraud in connection with any entry made by the said F. E. Cornish.

By Mr. MAYNARD.—We also offer in evidence the deed of Stephen Tepper to Robert M. Cobban; and also the deed of Albert J. Griswold, an unmarried man, to Robert M. Cobban.

By Mr. WALSH.—We object to this also upon the ground that it is irrelevant and immaterial to the issues in this case and incompetent, there being no allegation that any fraud in connection with the entries mentioned.

By Mr. MAYNARD.—We also offer in evidence deed of Marion B. Watson and Katie Watson, husband and wife, to Robert M. Cobban; also deed of Harry C. Dorman, unmarried, of Missoula, Montana, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction of these instruments in evidence for the reason that it does not appear from the bill of complaint that any charge is made of fraud in connection with any entry made by Harry C. Dorman.

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—We also offer in evidence deed of Marion B. Watson and Katie Watson, husband and wife, to Robert M. Cobban; also deed of Harriet Watson to Robert M. Cobban; also deed of John B. Catlin and wife, Lizzie T. Catlin, to Robert M. Cobban; and also deed of Lelia T. Bryan to Robert M. Cobban; and also deed of Edward Dodd and Cora Dodd, husband and wife, of Bonner, Montana, to Robert M. Cobban; also deed of Charles H. Moss, unmarried, of Missoula, to Robert M. Cobban; also deed of Hiram Dodd and Matilda Dodd, his wife, to Robert M. Cobban; also deed of Charles B. Sperry and Helen H. Sperry, his wife, of Cottonwood, Deer Lodge county, Montana, to Robert M. Cobban; also deed of Thomas R. McConnell and Laura McConnell, his wife, to Robert M. Cobban; and also deed of Dock E. Watson and Harriet Watson, his wife, of Clearwater, Montana, to Robert M. Cobban; also deed of Belle Gilles of Clearwater, Montana, formerly Belle Bryan, to Robert M. Cobban; also deed of Lewis S. Jakways, unmarried, to Robert M. Cobban.

By Mr. BICKFORD.—We object to the introduction in evidence of the deed of Lewis S. Jackways for the reason that it does not appear in the bill of complaint that any fraudulent transfer of the land mentioned has ever been made by the said Jackways to the defendant herein and it is therefore irrelevant and immaterial.

By Mr. MAYNARD.—We also offer in evidence deed of Edgar Lehman, an unmarried man of Bonner, Mon-

(Testimony of Albert Jemison.)

tana, to Robert M. Cobban; and also the deed of Leonard Barrett, an unmarried man, of Missoula, Montana, to Robert M. Cobban; also deed of Oscar Muckenheim to Robert M. Cobban; also deed of Cora W. Faust and Henry G. Faust, husband and wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction of the last-named deed upon the ground that there is no allegation in the bill of complaint charging any fraud whatever in connection with the entry made by Cora W. Faust or Henry J. Faust or Cora W. and Henry J. Faust mentioned in the deed to Robert M. Cobban.

By Mr. MAYNARD.—We also offer in evidence deed made by Charles E. Johnson and Edith C. Johnson, his wife, of Missoula County, Montana, to Robert M. Cobban.

By Mr. WALSH.—We object to this upon the ground that there is no allegation in the bill of complaint by which any fraud whatever is charged in connection with any entry made upon land by Charles E. Johnson, and the testimony is wholly irrelevant and immaterial.

By Mr. MAYNARD.—We also offer in evidence United States patent to lands located by Lizzie Wells and conveyed to the defendant, Robert M. Cobban; also patent of Marion B. Watson, Harrison Dodd, Hiram Dodd, Charles B. Sperry, Lizzie Dodd, Lelia T. Bryan, Thomas H. McConnell and Ambrose Martin.

(Testimony of Albert Jemison.)

By Mr. WALSH.—We object to the introduction in evidence of the patent to Ambrose Martin for the reason that there is no allegation in the bill of complaint concerning any alleged fraudulent entry made by Ambrose Martin and for the further reason that it is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence patent to Richard Pelky, Matilda Eddy, and Martha E. Wright.

By Mr. WALSH.—We object to the introduction in evidence of the patent to Richard Pelky for the reason that there is no allegation in the bill of complaint concerning any alleged fraudulent entry made by Richard Pelky, and for the further reason that it is irrelevant and immaterial to the issues in this case.

We also object to the introduction in evidence of the patent to Martha E. Wright for the reason that there are no allegations in the bill of complaint touching any alleged fraudulent entry in the case of Martha E. Wright, and for the further reason that it is irrelevant and immaterial to the issues of this case.

By Mr. MAYNARD.—We also offer in evidence patent to Lizzie Dodd, Katie E. Watson, Edward Dodd, and Susie Alford.

By Mr. WALSH.—We object to the introduction in evidence of the patent to Susie Alford for the reason that there are no allegations in the bill of complaint touching any alleged fraudulent entry of the said Susie

(Testimony of Albert Jemison.)

Alford, and for the further reason that it is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence patent covering the same lands as those mentioned in the deed to Winfield Dodd, Allen Dodd, Dock E. Watson, Lizzie B. Catlin, Levi B. Cyr, and Jasper B. Seely.

By Mr. WALSH.—We object to the introduction in evidence of the patent covering lands mentioned in the deed to Jasper B. Seely for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Jasper B. Seely, and for the further reason that it is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence patent to Cora Dodd, Lelia T. Bryan, Matilda Eddy, Harrison Dodd, Hiram Dodd, Emma Dildine, Charles B. Sperry, and May Hawthorne. Here are some more deeds that I have overlooked which I will offer in evidence. Deed of Henry C. Chattin, an unmarried man, to Robert M. Cobban; and also deed of B. Frank Chattin, an unmarried man of Missoula, to Robert M. Cobban; also deed of George L. Ramsey and wife to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of the deed from George L. Ramsey and wife to Robert M. Cobban for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of George L. Ramsey, and for the further

(Testimony of Albert Jemison.)

reason that the same is irrelevant and immaterial to any issues of this case.

By Mr. MAYNARD.—We also offer in evidence deed of S. C. F. Cobban to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said S. C. F. Cobban and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Alfred Rogers, an unmarried man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Alfred Rogers, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of George L. Ramsey and wife to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said George L. Ramsey, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—We also offer in evidence deed of Alex A. Rogers, an unmarried man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of Alex. A. Rogers, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of William M. Zander and Nellie Zander, his wife.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said William M. Zander or the said Nellie Zander, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed from Richard Pelky and Maud F. Pelky, his wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Richard Pelky or the said Maud F. Pelky, and for the reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed

(Testimony of Albert Jemison.)

of Calvin Yarger and Sarah Yarger, his wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Calvin Yarger or the said Sarah Yarager, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed from George Dildine and Emma Dildine, his wife, to Robert M. Cobban, and May Hawthorne, and Orin E. Hawthorne, her husband.

By Mr. WALSH.—We object to the introduction in evidence of the deed from May Hawthorne for the reason that there are no allegations in the bill of complaint of any fraudulent entry of May Hawthorne, and for the reason further that the same is irrelevant and immaterial.

By Mr. MAYNARD.—We also offer in evidence deed of John B. Catline and Lizzie T. Catline, husband and wife, to Robert M. Cobban; also another deed from John B. Catlin and Lizzie T. Catlin to Robert M. Cobban; also deed of Harrison Dodd and also deed of Jaspar B. Seely to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of the deed from Jaspar B. Seely for the reason that there are no allegations in the bill of com-

(Testimony of Albert Jemison.)

plaint touching any fraudulent entry of said Jasper B. Seely, and for the further reason that the same is irrelevant and immaterial to any issues of this case.

By Mr. MAYNARD.—We also offer in evidence deed of Albert Ehle and Mary J. Ehle, his wife; also deed of Martha E. Wright, a single woman, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of the deed from Martha E. Wright, for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of the said Martha E. Wright, and for the further reason that the same is irrelevant and immaterial to any issues of this case.

By Mr. MAYNARD.—We also offer in evidence deed of Lewis A. Wells and Lizzie Wells, his wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of the said Lewis A. Wells or the said Lizzie Wells, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of E. R. Kilburn and Effie M. Kilburn, husband and wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no

(Testimony of Albert Jemison.)

allegations in the bill of complaint touching any fraudulent entry of the said E. R. Kilburn or the said Effie M. Kilburn, and for the further reason that the same is irrelevant and immaterial to any issue in said case.

By Mr. MAYNARD.—We also offer in evidence deed of Susa Alford, a single woman, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction of said deed in evidence for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Susa Alford, and for the further reason that the same is irrelevant and immaterial, to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of William Eddy and Matilda Eddy, husband and wife, to Robert M. Cobban; and also deed of John B. Catlin and Lizzie T. Catlin, his wife, to Robert M. Cobban.

By Mr. WALSH.—We object to this for the reason that it is not the tract of land described in the bill of complaint.

By Mr. MAYNARD.—We also offer in evidence deed of Ambrose Martin, a single man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Ambrose Martin, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—We also offer in evidence deed of Joseph Frizzel, a single man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Joseph Frizzel, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Herman H. Spieker, a single man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of the said Herman H. Spieker, and for the further reason that the same is irrelevant and immaterial to the issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Winfield Dodd, a single man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of the said Winfield Dodd, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Allen Dodd, a single man, to Robert M. Cobban.

(Testimony of Albert Jemison.)

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Allen Dodd, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Levi B. Cyr and Ursule Cyr, husband and wife, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill of complaint touching any fraudulent entry of said Levi B. Cyr or the said Ursule Cyr, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—We also offer in evidence deed of Vital Cyr, a single man, to Robert M. Cobban.

By Mr. WALSH.—We object to the introduction in evidence of said deed for the reason that there are no allegations in the bill touching any fraudulent entry of the said Vital Cyr, and for the further reason that the same is irrelevant and immaterial to any issues in this case.

By Mr. MAYNARD.—Now, I have here patents covering some of the lands mentioned in the bill of complaint, which I will offer in evidence.

By Mr. WALSH.—I don't know how long this thing

(Testimony of Albert Jemison.)

will continue and how much of it can go into this record, Mr. Maynard, but I am going to call a halt on this thing. There is a possibility, you know, that we may be defeated in this action. If we are we will have to take an appeal, and we don't care to pay for printing all these things—these deeds and patents—unless there is something in them. If we expect to have a trial de novo on the appeal we have got to have all the evidence in the record, and unless there is some issue—something in the issues now—to which this matter goes, I am going to object to the master receiving any more of these instruments in evidence.

By Mr. MAYNARD.—You mean any of them at all?

By Mr. WALSH.—Any of them.

By Mr. MAYNARD.—You mean to say that they cannot go in at all?

By Mr. WALSH.—Oh, no, I have no objection to you putting in anything that has any sort of bearing upon your case, but how these patents at length can affect the matters in controversy here in any way or form is something that I cannot understand.

By Mr. MAYNARD.—Why, they are named in the bill of complaint.

By Mr. WALSH.—Whether they are in the bill of complaint or not you allege that patents were issued—that they were issued to certain parties, and we admit the fact; now, why these things—these patents—should go

(Testimony of Albert Jemison.)

in at length when you allege that certain deeds were executed on a certain day conveying this land to R. M. Cobban, and we admit it, I don't see any reason as a matter of fact why they should go in at length. As a matter of course, the Government of the United States is able to pay as much as they care for, but we have got to look out for the interests of this defendant, and I don't see any reason for putting these things in. Now, if there is any allegation in your bill of complaint that you desire to make proof of by these instruments, and you can fairly say that it is essential to support the allegations of your bill, and that the patents should go in at length, why, I wouldn't object, but I don't see where it is material and I am going to object to it.

By Mr. MAYNARD.—I offer in evidence now patent issued by the Government of the United States to Harry C. Dorman.

By Mr. WALSH.—Now, I object to that and I object to receiving any more of these instruments in evidence upon the ground that it is uselessly encumbering the record.

By Mr. MAYNARD.—Well, I guess we will put in our case.

By Mr. WALSH.—Well, that is all right, but you couldn't introduce the history of China into the record.

By the EXAMINER.—Well, Mr. Walsh has put in his objection, and you can raise that question when the matter of costs comes up.

(Testimony of Albert Jemison.)

By Judge BICKFORD.—And we object further for the reason that there is no allegation with reference to any land of H. C. Dorman's which was conveyed or transferred to the defendant in this case, and therefore it is irrelevant and immaterial. The patent would neither prove nor disprove any issue raised in the case, and it is manifestly irrelevant and immaterial. I don't think these matters ought to be put in at such length at this time.

By Mr. MAYNARD.—If I do not make the proof and show that these deeds and patents that are offered are material, competent and relevant to the issues notwithstanding the fact that they are not referred to in the bill of complaint, why, I will join with my brethren in asking that they be stricken from the files of the case so that there will be no expense with reference to the printing of them.

By Mr. BICKFORD.—The trouble is, if your Honor please, that there can be no other or different issue than than which is formed by the pleadings, and inasmuch as the name of H. C. Dorman is not mentioned as one of the persons who has made a fraudulent entry of land and has subsequently conveyed it to Mr. Cobban or someone else, the testimony cannot possibly be relevant and cannot be made relevant, and is entirely outside of any allegation contained in the complaint or the answer, and we object further upon the ground that it does not appear from the record at this time that the defendant

(Testimony of Albert Jemison.)

in this case is now the owner of any land which was at any time owned by H. C. Dorman.

By Mr. WALSH.—If your Honor please, Mr. Maynard claims the right to go on and put in all of these patents and a large number of the persons mentioned in the deeds and patents are not mentioned in the bill of complaint at all.

By Mr. MAYNARD.—It don't cost anything to offer them in evidence, and if we agree and stipulate that they can be eliminated, why, I don't see any objection to it, so far as the expense is concerned, that will be obviated in that way.

By Mr. WALSH.—That is all very likely, but if you put them in the record we will call on you for a stipulation that they shall not go into the record on appeal.

By Mr. MAYNARD.—Well, we can put it in there now, you can take it down, Mr. Cooper.

By Mr. WALSH.—You claim that you are entitled to have them in.

By Mr. MAYNARD.—Yes, and if I do not in my opinion—in my judgment—see that I can make this proof relevant and material to the issues in this case, then I will agree with you that it may be stricken out so that there will be no expense made to your client, or to the Government.

By Mr. MAYNARD.—We offer in evidence now United States patent to Leonard Barrett, Charles H. Moss,

(Testimony of Albert Jemison.)

William M. Zander, B. Frank Chattin, Guy W. Muchmore, Edward D. Doney, Oliver E. Muchmore, Elizabeth A. Muchmore, Thomas Pelky, Lewis A. Wells, Edgar Lehman, Fred Earl Cornish, John B. Chatlin, Martha M. J. Doney, Alfred Stewart, Louis S. Jakways, Lenia T. Bryan, Belle Bryan Gilles, Charles Cloutier, Albert F. Muchmore, Edward D. Doney, Louis A. Wells, Effie M. Kilburn, Hattie Watson, Sarah Yarger, Harriette Bryan, Cora Y. Faust, Charles E. Johnson and Harry C. Dorman.

By Mr. WALSH.—To all of these instruments we object except such as are mentioned in the bill of complaint, and with reference to which it is alleged the parties are guilty of fraud in making the entries resulting in these facts, upon the ground that the same are irrelevant and immaterial. We also object to those that are mentioned in the bill of complaint herein upon the ground that the issuance of the patents as alleged in the bill of complaint is admitted in the answer of defendant and we therefore contend that there is no issue as to these matters in any way or matter relative or material to the case.

CHARLES H. MOSS, a witness on behalf of the Government, produced and sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Moss, where do you live.

A. I live in Missoula, Montana.

Q. How old are you?

A. I am, well—thirty-two years old.

Q. You are an unmarried man, are you not?

A. Yes, sir.

Q. How long have you lived in Missoula?

A. It will be eleven years, it is eleven years now.

Q. Right in the village of Missoula, or the city of Missoula?

A. Well, just about a mile and a half out up the Rattlesnake.

Q. Who did you live with?

A. My mother and father.

Q. You are a peddler by occupation, are you not?

A. Yes, sir.

Q. You live with your father and mother, you say?

A. Yes, sir.

Q. You are paralyzed in your right arm, are you?

A. Yes.

Q. How long have you suffered from paralysis?

A. About twenty-four years—twenty-five years.

Q. You were a child when you first became paralyzed? A. Yes, sir, seven years old.

(Testimony of Charles H. Moss.)

Q. How long have you been engaged in the business of peddling?

A. I don't know, ever since I have been down here.

Q. Down where? A. Down in Missoula, I mean.

Q. You took up a claim under the Stone and Timber Act, did you not? A. Yes.

Q. You came here to Helena when you made your entry, did you? A. Yes, sir.

Q. You recognize that as your signature? (Counsel hands witness paper for identification.)

A. Yes, sir. That is my signature all right.

Q. And the lands described in your statement as the west half of the northeast quarter and the southeast quarter of the northeast quarter, and the northeast quarter of the southwest quarter, being the west half of the northeast quarter and lots 2 and 3, in section 8, township 15 north, of range 14 west?

A. Yes, sir.

Q. How did you come to Helena, at the time you made your application? Who came with you?

A. Why, with Harry Dorman.

Q. Harry Dorman?

A. Yes, Harry Dorman, I know that is his last name.

Q. You two came together? A. Yes, sir.

Q. And made your application at the same time?

A. Yes, sir.

Q. Then you afterwards came at the same time and made your final proof in the case? A. Yes, sir.

(Testimony of Charles H. Moss.)

Q. And who were your witnesses at the time you made final proof? A. Why, Dorman, I guess.

Q. And Mr. Griswold? A. Yes, sir.

Q. Mr. Moss, what is Mr. Griswold's first name?

A. Chauncey.

Q. Did you—when did you see this land?

A. Well, just a few days before I came here, about three days, I guess, before I came over to prove up on it, that is to enter it. I cannot just remember the date.

Q. Who took you to the land? A. Mr. Cobban.

Q. Mr. Cobban took you to the land?

A. Yes, sir.

Q. Had you ever seen it before?

A. No, sir. He pointed it out to me on the ground.

Q. And who was with you at the time?

A. Mr. Dorman.

Q. How long were you there?

A. Well, let us see, I guess three or four hours, I don't just remember.

Q. Had you ever seen the land before?

A. No, sir.

Q. Have you ever seen it since? A. No, sir.

Q. Was Mr. Dorman's land pointed out to him on the same day? A. Yes, sir.

Q. Were you with him? A. Yes, sir.

Q. Within two or three days or a few days thereafter, you came over to Helena and made your entry?

A. Yes, sir.

Q. Who gave you the money to come here?

(Testimony of Charles H. Moss.)

A. Mr. Cobban.

Q. Mr. Cobban gave you the money?

A. Yes, sir.

Q. How much did he give you?

A. I don't remember just how much.

Q. Well, about how much?

A. Why, I think—it is $25.00, if I ain't mistaken.

Q. Twenty-five dollars, you say? A. Yes, sir.

Q. Do you remember what you did with the $25?

A. Well, I paid my expenses, and paid for the land.

Q. Did you use $10 of it for the entry fee?

A. Yes, sir.

Q. And then you went back home, did you?

A. Yes, sir.

Q. That was $10 and the rest of it was for your expenses? A. Yes, sir.

Q. And within sixty days thereafter you came back again? A. Yes, sir.

Q. And who came with you? A. Mr. Dorman.

Q. And Mr. Griswold?

A. Mr. Griswold was here.

Q. Oh, he was here, was he? A. Yes.

Q. Did Mr. Cobban come with you on the cars?

A. I don't think so.

Q. When you came here from Missoula and made your final proof, did he?

A. I don't think so, I don't remember about that.

Q. You don't remember that?

A. No, I did not see him on the train.

(Testimony of Charles H. Moss.)

Q. Did you see him after you got here?

A. Yes, sir, certainly.

Q. Whereabouts did you meet him?

A. I met him at the train.

Q. Down at the train at the depot? A. Yes.

Q. You don't know whether he happened to be there at the station when you came in, or whether he was on the train? A. Well, he was going east.

Q. Where did you get the money to make your payment on the land?

A. Mr. Cobban loaned me the money.

Q. He gave you the money?

By Mr. WALSH.—We object now to the statement of counsel, for the reason that he has transposed and substituted words which were not used by the witness, and changed the word "loaned" to "gave," and further upon the ground that the question is leading.

Q. Well, you say that you received the money from Mr. Cobban?

By Mr. WALSH.—No, that was not what he said.

Q. Well, you got the money from Mr. Cobban?

A. I borrowed the money.

Q. Yes, and where did you get it?

A. I got it of Mr. Cobban.

Q. At the station there? A. Yes.

Q. When you landed here in town for the purpose of making your final proof, you received this money from Mr. Cobban at the station? A. Yes.

(Testimony of Charles H. Moss.)

Q. How much did he give you?

A. He gave me a check for $500.00.

Q. For $500.00? A. Yes.

Q. Upon what bank?

A. Well, I don't remember now.

Q. What is this other man's name that came with you? A. Dorman.

Q. Dorman, was he with you at the time?

A. Well, he was around. I don't know where.

Q. Do you know whether he received a check, too, from Mr. Cobban at that time?

A. Well, I don't know. I don't remember now.

Q. You don't remember? But you won't say but what he did?

A. No, I don't know whether he did or did not.

Q. But you know that you did? A. Yes.

Q. Then you and Dorman came down town with Griswold? A. No, Griswold was here.

Q. Where did you go after leaving the station?

A. I went up to this hotel here, Cosmopolitan.

Q. Where did you first see Mr. Griswold?

A. I think that evening.

Q. Where did you see him?

A. At the land office.

Q. When did you first see Mr. Griswold?

A. I think that same evening.

Q. And you went to the land office the next day?

A. I think it was the next day, I would not say for sure.

Q. What have you to say as to whether or not you

(Testimony of Charles H. Moss.)

saw Mr. Griswold before you went to the land office?

A. Yes, we seen him that evening.

Q. You saw him that same evening?

A. Yes, that afternoon or evening, I don't remember now, it has been quite awhile ago.

Q. Had you expected to meet Mr. Cobban at the station? A. I did not know where he was.

Q. Did he tell you that he was to meet you at Missoula—at Helena?

By Mr. WALSH.—We object to that as being leading.

By the EXAMINER (Of the Witness).—Answer the question. A. No, not as I remember.

Q. Not as you remember? A. No.

Q. Well, you knew when you came up here from Helena—from Missoula to Helena to go to the land office to make your final proofs. You had to have some money, didn't you? A. Yes, sir, certainly.

Q. Where were you to get the money?

A. Well, I made an arrangement with Mr. Cobban.

Q. When?

A. Along about—I don't remember just when.

Q. You don't remember just when, you say?

A. No, I don't.

Q. Whereabouts were you when this arrangement was made?

A. When we made the arrangement for the money?

Q. Yes. A. Well, I don't remember that.

Q. You don't remember that?

(Testimony of Charles H. Moss.)

A. No, I don't remember that.

Q. But Mr. Cobban gave you this money—this check at the depot? A. Yes, he did.

Q. This check for $500, I mean?

A. Yes, he did.

Q. What did you do with this $500, Mr. Moss?

A. Well, I paid for my land.

Q. How much did you pay for the land?

A. I couldn't tell you. If we had the deed to show it I could—the records ought to show that.

By Judge BICKFORD.—We will object to that as it is not the best evidence of the facts sought to be proven of the witness.

Q. You don't remember what you did with the money?

A. Well, I paid for the land for one thing.

Q. Well, was there any left after you had paid for the land? A. Yes, sir.

Q. How much?

A. I think there was about $75, if I remember right.

Q. About $75, you think? A. Yes, or $85.

Q. What did you do with that?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and outside of the issues in this case.

A. Well, what I didn't use, I, of course—

By Mr. BICKFORD.—Used?

A. Yes.

Q. What you didn't use. How much did you use

(Testimony of Charles H. Moss.)

in your best judgment of the $500.00 in the purchase of the land, of this $500 that you received of Mr. Cobban at the time and place you have now testified to?

A. Between four hundred—four hundred and fifty, three hundred and fifty, three hundred and seventy-five —something like that.

Q. You used that much in paying for the land, and paying your expenses? A. Yes, sir.

Q. And did you keep the rest?

A. Do I have to answer that?

By the EXAMINER.—Yes.

A. Of course, I returned that to Mr. Cobban.

Q. When did you return it?

By Mr. WALSH.—We object to that as being irrelevant and immaterial to the issues in this case.

A. Why, when I went over to Butte to see my uncle and I saw Mr. Cobban after he returned from the East.

Q. How long after you made your final proofs?

A. Well, sir, I could not tell you. A couple of weeks or more.

Q. And how did you go—where did you go to from her, to Butte? A. Yes, sir.

Q. Did you stay there all the time that intervened between the time of making your final proofs and going to Butte?

A. Well, after I got the final proof done, I went right to Butte, and stayed there.

Q. And stayed there? A. Yes.

Q. Why did you stay in Butte?

(Testimony of Charles H. Moss.)

A. At my uncle's.

Q. Why did you go to Butte?

A. To visit my uncle.

Q. Did you not go to Butte for the purpose of staying there until Mr. Cobban returned from the east?

By Mr. WALSH.—We object to that as being leading and as an attempt on the part of counsel to cross-examine his own witness.

Q. As a matter of fact, you went from here to Butte and to stay there until Mr. Cobban returned?

A. I see Mr. Cobban there.

Q. Yes, and did not go out of town until—until you saw Mr. Cobban.

Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and upon the further ground that it is leading.

A. Well, I went to Butte on a visit. I did not care whether I see Mr. Cobban—

Q. But as a matter of fact you did see him?

A. Yes, I met him on the street.

Q. After his return from the east? A. Yes.

Q. And what did you do when you met him on the street?

A. I don't know what we did do. I offered him the land.

Q. You what?

A. I told him I would sell him the land if he wanted it.

Q. You went at once after you met him on the street?

(Testimony of Charles H. Moss.)

A. To the other Mr. Cobban.

Q. You went up to his office did you not?

By Mr. WALSH.—We object to that for the reason that it is leading. A. Yes, certainly.

Q. And at once after going to Mr. Cobban's office, you conveyed the land to Mr. R. M. Cobban?

By Mr. WALSH.—We object to that as leading, and as manifestly improper, and as an attempt to cross-examine his own witness. The witness said that he met Mr. Cobban on the street, and then and there offered to sell the land to him, and he has not been permitted yet by the counsel to tell what transpired before counsel has asked him why certain things were thus and so.

A. Yes.

Q. Did he pay any money to you then?

A. He paid me $100.

Q. One hundred dollars? A. Yes.

Q. And that is what you got, the sum total of what you got for making this entry, is that not so?

By Mr. WALSH.—We object to that as assuming a fact that is not in evidence, and the witness has not at any time testified that he got anything at all for making any entry, and it is not fair to put that question to him. The witness has testified that he offered to sell the land to Mr. Cobban, and that Mr. Cobban gave him $100, and he has not testified at any time that he got $100 for making the entry, and it is not fair to ask him that question.

(Testimony of Charles H. Moss.)

Q. That is what you got at that time, and was paid by Mr. Cobban $100 for this land?

A. Well, I could not agree with him then.

Q. But as to the fact that you received $100?

A. Why, I went there and I offered him the ground, the lands, and he said he would pay me $100, and the expenses he would bear.

Q. He was to bear the expenses and give you $100?

By Mr. WALSH.—We object to that as not being a proper way to examine this witness.

By Mr. MAYNARD.—Well, that is what he has sworn to.

By Mr. WALSH.—We object to that. The question—the witness should be permitted to tell what the conversation was, and the counsel should not, under any circumstances, venture to put his construction upon what took place, and then ask the witness whether this and so and so occurred. The witness is laboring under some difficulties with reference to his physical disabilities, and is embarrassed about answering the questions, and he ought to be permitted to tell what took place.

Q. Is that so?

By the EXAMINER.—You can answer that question.

A. Why, yes; he did not make the arrangement before I—he did not make the arrangement before I—he made the arrangement then, not before I made the entry on the land, or proved upon it. Did not say anything about it.

(Testimony of Charles H. Moss.)

Q. But that is what you did receive?

A. Yes, $100.

Q. And he bore the expenses?

A. He gave me the money for the expenses, then I gave him—when I sold him the land, he gave me $100, and all the expenses he bore.

Q. Did you go back to Missoula, after you had conveyed this land?

A. Yes, in about a week or ten days.

Q. About a week or ten days thereafter?

A. Yes.

Q. Have you seen Mr. Cobban since then?

By Mr. WALSH.—We object to that as being irrelevant and immaterial, and having nothing to do with the issues in this case.

A. Why, of course.

Q. How many times?

A. Why, I could not tell you. Hundreds of times, I guess.

Q. Hundreds of times? A. Yes, sir.

Q. He lives in the same town with you?

A. Yes, sir.

Q. How many times have you talked with him in regard to this matter?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial. A. Only once.

Q. When was that?

A. I could not tell you now.

Q. Whereabouts were you? A. At his house.

(Testimony of Charles H. Moss.)

Q. How did you happen to go to his house?

A. My father told me that Mr. Cobban knew of some lands and if I would go to him that I could go with him, and he would point them out to me.

Q. Did he go? A. Yes, sir.

Q. Well, I mean was that since? A. No.

Q. I am not calling your attention—you are now testifying how you happened to go and make the entry in the first place? A. Yes.

Q. I am not asking you about that. I am asking you about how many times you have seen Mr. Cobban since you conveyed this land to him in Butte?

A. Well, I could not say how many times. Hundreds of times, but never to talk over the land.

Q. Only once?

A. That was after I conveyed the land; that settles it; I have not spoken to him about the land since.

Q. Has he not spoken to you since the time you conveyed the land to him, and regarding your testimony here? A. No, only—

Q. Only what?

A. Well, no. We talked it over this morning. Told what I told you.

Q. Yes, I mean before to-day? A. No, sir.

Q. Never had any talk with him? A. No, sir.

Q. Anybody else talk with you in regard to your testimony here before to-day?

A. Why, I don't know, there has been lots of that.

Q. Well, who makes the lots that have talked with

you in regard to what your testimony, to what your testimony would be here?

By Mr. WALSH.—We object to that for the reason that it is not proper for the counsel to cross-examine his own witness.

By Mr. MAYNARD.—Yes, sir, examination of this witness the best way we can.

Q. Now, tell me, Mr. Moss, who are some of these men who have talked with you since you conveyed this land to Mr. Cobban as to the kind of testimony you would give here?

A. I was to testify to the truth, and I am telling you the truth right now.

Q. When was it first told you and by whom that you was to see Mr. Cobban and that he would loan you the money?

By Mr. WALSH.—Well, one moment, we object to that because it assumes a matter as proven, that has not been proved, and that has not been testified to.

By Mr. MAYNARD.—He has testified here that Mr. Cobban loaned the money to him.

Q. Who was it, Mr. Moss?

A. I went to Mr. Cobban and told him that I wanted to take up the land.

Q. Now, I am not talking about that. I am talking about who has told you, since you conveyed the land?

A. No one.

(Testimony of Charles H. Moss.)

Q. You were subpoenaed here by the Government, were you not? A. Yes, sir.

Q. Who, since you have arrived in this town, as a Government witness? You have been taken to the office of one of the attorneys for the defendant by Mr. Cobban, have you not?

A. I went with him.

Q. You went with Mr. Cobban to Mr. Walsh's office?

A. Yes, sir.

Q. Mr. Cobban came to you and asked you to go with him?

A. No, sir, I went and told him that I wanted to go and see Mr. Walsh.

Q. What did you want to go and see the counsel on the other side for?

A. Well, to talk it over.

Q. To talk it over? A. Yes, sir.

Q. Well, you were talking it over with the counsel on the other side, and while you were talking it over something was said about a loan, was there not?

By Mr. BICKFORD.—We object to that.

By Mr. WALSH.—I want to cross-examine the witness if the Court please.

By Mr. MAYNARD.—What is the proposition?

By Mr. WALSH.—This man is indicted, and I am his attorney and I don't propose to have you go into any conversation between me and my client.

(Testimony of Charles H. Moss.)

By Mr. MAYNARD.—Oh, well, I did not know you were his attorney.

Q. You have been indicted for making this entry?

A. Yes, sir.

Q. You came to me as your attorney to talk this matter over before you went onto the witness stand?

A. Yes, sir.

By Mr. WALSH.—Now, we object to counsel going into the matter of the conversation had between this witness and myself at my office.

By Mr. MAYNARD.—I don't intend to go into it.

Q. But you came directly from Mr. Walsh's office, your attorney, to this office where the examination is going on, did you not?

A. Two or three hours afterwards.

Q. Who was present with you besides your attorney and Mr. Cobban? Who took you there?

A. No one.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Moss, was there any other member of your family who has lived with you besides your father and mother? A. No, that is all.

Q. About how old are they?

A. Well, my father is nearly 70, and my mother is 57.

Q. You have a home upon the Rattlesnake?

A. Yes, sir.

(Testimony of Charles H. Moss.)

Q. And how much of a place have you there, Mr. Moss?

A. Well, it was about two and a half or three acres.

Q. You cultivate that small place, do you?

A. Yes, sir.

Q. Who owns the place? A. I do.

Q. You own it yourself?

A. Well, mother owns part of it, and I own the other.

Q. You own the home that you live in?

A. Yes, sir.

Q. So that you really keep your father and mother with you? A. Yes.

Q. About what is your property worth, Mr. Moss?

A. Well, I pay taxes on $2,000.

Q. And what property does that consist of outside of the home that you speak of?

A. Well, that is all that is in my name. That is the home.

Q. Now, Mr. Moss, I wish you would tell us, what promise or agreement you ever entered into prior to the time that you made your filing upon this land that you would convey this land to Mr. Cobban or anyone else? A. None at all.

Q. I believe you said that your father had told you that Mr. Cobban would be able to find you a timber claim if you desired to take it up? A. Yes, sir.

Q. Well, had the matter of your taking a timber claim been the subject of conversation with your family before you made it?

(Testimony of Charles H. Moss.)

A. No, sir. Just that morning when he told me so. I went up and seen it.

Q. You went up and saw Mr. Cobban?

A. Yes, sir.

Q. And he told you that he would find you a timber claim? A. Yes, sir.

Q. Well, now, did you have any conversation with Mr. Cobban at that time about where the money would come from that you were going to use?

A. Well, I told him that I did not have any money of my own to pay for it, and he said that he would loan it to me or give it to me; which I should think would be the same thing, loaning or giving it to me, and make an arrangement that he would get it back, and that I would pay it back when I got the money.

Q. How long have you known Mr. Cobban, Mr. Moss?

A. About twenty-two or twenty-three years. I don't know just how long.

Q. What have been your relations with him during that time? A. A friend.

Q. A friend of the family? A. Yes.

Q. Your father has known him also?

A. Yes.

Q. How long has your father known him?

A. Knew him when he first came here.

Q. Now, what account, if any, did you render to Mr. Cobban of the way you had expended the money?

A. I kept track of it.

(Testimony of Charles H. Moss.)

Q. And was there something in the nature of a settlement had over at Butte when you were there?

A. Yes, sir, when I paid the money to him.

Q. And as I understand you, at that time Mr. Cobban agreed that he would pay you $100 over and above whatever the expenses of the land were?

A. Yes, sir.

Q. Now you had, as a matter of fact, a talk with me this morning about this matter, Mr. Moss, before you went upon the witness stand? A. Yes, sir.

Q. Did you know where my office was?

A. No, not until Mr. Cobban—until I asked Mr. Cobban.

Q. Asked Mr. Cobban where my office was, and you came up and saw me? A. Yes, sir.

Q. And I talked this matter over with you at that time? A. Yes, sir.

CHARLES H. MOSS.

Subscribed and sworn to before me this 14th day of February, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

ELIJAH W. HOYT, a witness for defendant, called with the consent of the attorney for complainant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Hoyt, how old are you?

A. Sixty-seven years old.

(Testimony of Elijah W. Hoyt.)

Q. Where do you live?

A. I live near Ovando, about five miles from that little village, in the same township.

Q. Are you a married man? A. Yes, sir.

Q. Living with your wife there? A. Yes, sir.

Q. How old is she? A. Sixty-five years old.

Q. What is her name? A. Charlotte S. Hoyt.

Q. What business are you engaged in there?

A. At present in raising cattle; ranching, it is generally termed, I believe.

Q. How long have you lived where you now do, in the neighborhood of Ovando? A. Sixteen years.

Q. How far away from the nearest railroad station is that?

A. Forty-five miles; Drummond is our nearest station.

Q. Mr. Hoyt, you made an entry, did you not, some time during the year 1899 of a timber claim under the Timber and Stone Act? A. Yes, sir.

Q. What is the nature of the title you have to the place that you live on?

A. I have a patent on the homestead. I settled first on this land, the south half of section twenty-four, township fifteen north, range twelve west, in 1885; it was then unsurveyed.

Q. What tract is this that you refer to?

A. The southwest quarter is what I took under the Timber and Stone Act.

Q. That is to say, that that tract which you took

(Testimony of Elijah W. Hoyt.)

under the Timber and Stone Act, you first settled on in 1885?

A. Yes, sir, and have lived on it ever since and occupied it ever since.

Q. Now, Mr. Hoyt, you don't live on that tract now, however?

A. I live on that half section, on the homestead, but it is the southeast quarter where the house is now standing.

Q. That is your homestead?

A. That is on the homestead.

Q. But you originally, I understand, settled on this claim?

A. Yes, sir; I lived on that six months when I first went on the claim; it was then unsurveyed.

Q. How did it come about that you left it and lived on the adjacent quarter?

A. Well, that, I should say, was on account of the situation of the land. The hay grew more on this homestead part than it did on the other, and it was a little handier to get to the hay land.

Q. Which was the more suitable for cultivation?

A. Well, the homestead. The other couldn't be irrigated; there was no water to irrigate it and it was a high table ground with some timber on it, not entirely covered, but considerable timber on it.

Q. And having occupied it there for six months, you left that and went on the adjacent quarter as your homestead? A. Yes, sir.

(Testimony of Elijah W. Hoyt.)

Q. But as I understand you, you did occupy the ground?

A. I occupied it continually, expecting to pre-empt that quarter, but the land commissioner there told me that he thought I had better put timber and stone, because someone right swear that it was worth more for that than for agricultural purposes, so I took his advice and filed a Timber and Stone Act instead of a pre-emption.

Q. When did you make your filing?

A. I think it was in the month of June in 1899, as I remember.

Q. Where did you go to make the filing?

A. Here to Helena.

Q. And you subsequently made proof on it?

A. Yes, sir, I proved up on it and paid for it.

Q. Now, Mr. Hoyt, it is charged in the bill of complaint, that, having made final proof on this land on the 31st day of August, 1899, you deeded the land to R. M. Cobban on the 16th day of September, 1899. What have you to say to that?

A. That is not correct. I haven't deeded the land away at all. I did sell Mr. Cobban some timber that I didn't want to use and couldn't use for any purpose there.

Q. On this land?

A. On this land, but I never deeded the land away. I have got the title now. I never deeded the land to anyone.

(Testimony of Elijah W. Hoyt.)

Q. Now, it is also charged in the bill of complaint that you did not take this land there for your own benefit, Mr. Hoyt, but that you entered it for the use and benefit of Mr. Cobban and pursuant to an agreement that you had originally that you would convey this land to him when you got the title. What have you to say about that?

A. I never made any agreement with any man, no matter who it was, and never offered to sell it to anybody.

Q. Were you indicted for perjury, Mr. Hoyt?

A. I was, yes, sir.

Q. In making this entry?

A. I am now under arrest for perjury.

Q. Upon the charge that you swore falsely when you said you took this land in your own interest?

A. Yes, sir, I presume that was the charge.

Q. Now, did your wife, Mrs. Hoyt, also take a timber claim? A. She did, sir.

Q. Where was hers located?

A. In the same section. I don't know as I can describe it now; it is, I should say, the west half of the northwest quarter, that is two forties, and then the southeast quarter of the northwest quarter, I should think would be the proper description; three forties she took.

Q. She was indicted for perjury, too, was she?

A. She was; yes, sir.

(Testimony of Elijah W. Hoyt.)

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Hoyt, I hold in my hands the certified copy of the deed which you made to Mr. Cobban, which says:

"This indenture made the 7th day of September in the year of our Lord one thousand eight hundred and ninety-nine, between Elijah W. Hoyt and Charlotte S. Hoyt, his wife, of Ovando, Deer Lodge county, Montana, the parties of the first part, and R. M. Cobban of Missoula, Missoula county, Montana, the party of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the timber suitable for lumber or ties growing or being upon the south half and the west half of the northwest quarter and the southeast quarter of the northwest quarter of section twenty-four, township fifteen north, range twelve west, Montana meridian, in Deer Lodge county, Montana, containing four hundred acres, together with a right of way upon and over the said premises for the purpose of removal of the said timber or timber growing upon this or other lands for the period of ninety-nine years from the date hereof; provided, that in the use of the said roadways the meadow will not be damaged. It is distinctly

(Testimony of Elijah W. Hoyt.)

understood that the lands above described are not herein conveyed."

The timber that you conveyed was from this land that was embraced in this entry that you made under the Stone and Timber Act?

A. With the exception of some on the southeast quarter. You will notice there that the south half of the section is described; that adjoins the southeast quarter. That is my homestead. There is some little timber on there, and that timber is included with the other timber that I sold to Mr. Cobban. That is all correct there except the price. The price is incorrect. I spoke about that at the time, and told them that I thought it was wrong; it ought to be just the transaction written right out, what the transaction really was, but they said it didn't make any difference at all, and I finally gave them the deed as it was.

Q. What was the real consideration?

A. Seventeen hundred and fifty dollars, instead of two thousand.

Q. As I understand you, this timber that you conveyed to Mr. Cobban on the 7th day of September, 1899, was from the land that you had taken up under the Stone and Timber Act a few weeks before?

A. Yes, sir; with the addition of the timber on the homestead. I conveyed it all at the same time; it was all included in the one deed, my wife's timber and mine.

Q. Now, Mr. Hoyt, how was it that you happened to make this application for a stone and timber claim that

(Testimony of Elijah W. Hoyt.)

summer; was it not for the particular purpose of selling this timber to Mr. Cobban?

Mr. WALSH.—We object to that as immaterial, irrelevant and incompetent.

A. No, sir; I didn't take it for any such purpose. I didn't know at the time I took it that I could sell it to anybody. I simply knew that there was men buying timber, and had been for a number of years, the Blackfoot Milling Company and others, but I didn't know that I could sell that timber to anybody.

Q. Had you not had a talk with Mr. Cobban—

A. Not one word; not one single word.

Q. No talk with Mr. Cobban in regard to this matter?

A. No, sir.

Q. At any time? A. No, sir.

Q. I wish you would refresh your memory.

A. Well, I know what I am talking about.

Q. Did he not go to your house?

A. Certainly.

Q. When was that?

A. Well, I can't give you the day and date. He and his wife came to my place, and I forget whether it was breakfast or dinner that they took with our folks, but he didn't offer to buy any timber of me at all nor I didn't offer to sell him any.

Q. But you know that he was buying timber in that section of the country, do you not?

A. Well, I did know that he was buying timber; yes, sir.

(Testimony of Elijah W. Hoyt.)

Q. It was generally known throughout that country, as far as you know?

Mr. BICKFORD.—We object to that as irrelevant and immaterial and not proper cross-examination.

A. I believe it was; yes, sir.

Q. You had heard from any sources, had you not, that there was an opportunity for people, men and women, to make entries under the Stone and Timber Act, and that after they had obtained the receiver's final receipt there would be an opportunity given them to sell their claim to Mr. Cobban and get one hundred dollars and expenses?

Mr. BICKFORD.—The same objection.

A. I don't know anything about that.

Q. Hadn't you heard that?

A. Not that, sir; I don't know anything about that racket at all.

Q. Never heard that?

A. I can't say that I never heard that; I don't know; there was a good deal of talk one way or the other.

Q. But you won't say but what you heard that?

Mr. WALSH.—Objected to as immaterial and irrelevant and not proper cross-examination.

A. I don't say I never heard that; I can't say that.

Q. What is the truth in regard to that?

A. The truth—well, that is a joke, I guess. The truth—

Q. Are you a stranger to that proposition?

A. Well, sir, a thing I don't know I can't say whether

(Testimony of Elijah W. Hoyt.)

it is true or false. I might hear a coyote howl or something else, or hear somebody talk, but it amounts to nothing as far as the truth is concerned; I don't know whether it is true or false.

Q. I ask you as a matter of fact if you did hear that; I don't ask you whether it was true or false.

A. I think I have gone over that.

Q. What is your answer?

A. I think perhaps I might have heard some such talk.

Q. Didn't you hear a good deal of such talk?

Mr. WALSH.—Objected to as immaterial.

A. No, I don't think I did.

Q. You won't swear but that you did?

A. Why I answered that question two or three times; I don't thing it is necessary—

The EXAMINER.—Yes, you can answer it.

A. Why, I think perhaps I heard some such remark; I couldn't say positively, but I think I did. I can't recall now just who said it, but I think perhaps I had heard some such thing as that; I wouldn't say positively.

Q. Your had talked with people in regard to the matter, had you not?

A. Oh, there was some talk about buying timber and selling timber to different parties, and I can't just say what it was nor who said it. I wouldn't now at this time pin myself down to tell just who said it, for I can't do it. I don't remember just who it was. I know there was talk about selling timber.

(Testimony of Elijah W. Hoyt.)

Q. You had a talk with Mr. Faust of the firm of Jakways & Faust in regard to the matter?

A. Well, the first that I heard about timber, Mr. Faust wrote me a letter stating that he would like to see me on business. He is postmaster at our place, so when I went in to the postoffice I asked him what the business was, and he said: "Mr. Hoyt, there is a man going through here buying timber." I asked him who the man was, and he said Mr. Griswold. "Well," I said, "I never saw Mr. Griswold, but I wouldn't pay any attention to anything of that kind from the reputation I know of the man." Then he says, "I think there is a man behind him by the name of Cobban." That is the first I heard about timber.

Q. Then state all that he said then in regard to Mr. Cobban's connection with the matter.

A. Well, he said he didn't know—

Mr. BICKFORD.—Objected to as hearsay.

The EXAMINER.—You can answer.

A. I think he then made this statement to me: "I think, Mr. Hoyt, that perhaps Mr. Clark is at the back of this thing." I think Mr. Faust made that remark to me.

Q. The defendant in this case?

A. Well, no; not the defendant.

Q. Senator Clark?

A. Why, yes; he had reference to Senator Clark. It was mere supposition on his part as I understood.

Q. That there was Griswold, and then behind Griswold was Cobban, and behind Cobban was Senator Clark, the defendant in this case?

(Testimony of Elijah W. Hoyt.)

Mr. WALSH.—We object to that.

A. Well, he didn't say that either; he said: "Perhaps Mr. Clark is at the bottom of this thing," or made some such remark; I can't repeat his exact words, but that was the substance that he was conveying to my mind.

Q. State whether throughout your region of country it was generally understood that Senator Clark was behind these land purchases?

A. Oh, no; I wouldn't say anything of that kind—

Mr. WALSH.—To that I am going to object, and I am going to counsel the witness not to answer at all.

A. —No, I don't know anything about any such thing as that.

Mr. WALSH.—The witness has answered now, so let it go.

Q. While you don't know, you had heard that, had you not? A. No, no, I won't say—

Mr. WALSH.—I object to that and ask the Master to instruct the witness not to answer.

Mr. MAYNARD.—I insist upon the answer. The proposition is that it was known throughout that country, was circulated throughout the region that Senator Clark was behind Cobban and Cobban was behind Griswold—

Mr. BICKFORD.—We object—

The EXAMINER.—Wait a minute. He is making his argument. Let him make his argument. This all goes down, and you can make your argument afterwards.

(Testimony of Elijah W. Hoyt.)

Mr. MAYNARD.—And I propose to follow it up by showing from this witness that he himself told me yesterday on his own motion, the first intimation that I ever had on the subject, that he had heard throughout that region of country—it had come to him from many sources—it was common talk that while Mr. Griswold was making these purchases, he was making them for Mr. Cobban, and Mr. Cobban was making them for Senator Clark with Senator Clark's money, and that Senator Clark had deposited his money in the Western National bank of Missoula, Montana, with instructions to the officers of that bank to honor the checks of Mr. Cobban and of Jakways and Faust, the same as if he himself had drawn them.

Mr. WALSH.—Are you going to prove this by this witness?

Mr. MAYNARD.—That is what he told me yesterday.

The WITNESS.—I beg your pardon, sir, you are mistaken.

The EXAMINER.—Now, you can make your statement.

Mr. BICKFORD.—I want the witness to tell counsel on the other side that he is a liar, as he started to do, before I make my argument.

The EXAMINER.—That sort of talk will not be tolerated here; I have authority that far. Now, you make your statement.

(Testimony of Elijah W. Hoyt.)

Mr. BICKFORD.—If your Honor please, the proposition as stated by counsel on the other side was that these assertions had been made in a community. The proposition was made by counsel upon the other side in his question, premising that certain rumors were current in the community, and the witness, in answer to that proposition as made by counsel, said that no such rumors were or had been current in the community. On four separate occasions counsel insisted upon repeating the question and saying to the witness that these rumors were current in the community, and now he attempts for the fifth time to repeat to the witness the same assertion and make it the language of the witness, and the witness has every time said that he had heard no such rumors. Now, if your Honor please, in a spirit of fairness, in a spirit of justice, in a spirit of right, we say that these things ought not to go into this record. When counsel makes a proposition to the witness once and the witness says that the proposition made by counsel is not true, he reiterates it a second time and the proposition is again denied, and it is repeated four or five separate times, we say that it ought not to go into the record and the witness ought not to be called upon to answer so many times the assertion of counsel, which is not the testimony in the case. We submit to your Honor in a spirit of fairness again, that if the counsel is going to testify as to what was said by the witness outside of the courtroom, that he should, like an ordinary witness, be put under oath and make his statements in the same way that the witness makes his. Of

(Testimony of Elijah W. Hoyt.)

course, he will have an opportunity of doing that later on if he chooses so to do, but at this stage of the game, at this stage of the proceedings, counsel has no right to make these assertions and interject them into this record, and we want to be placed on record as objecting to them, and insisting that the record should be kept clear of these extrinsic matters. We submit to your Honor at this time that we never have at any time interposed an objection or insisted upon the exclusion from the record of anything which would legitimately go in there under any possible view of the law or under any possible construction of the rules of evidence, and at this time we believe that our position should be sustained by the Master.

Mr. WALSH.—Now, if your Honor please, we made this objection with a view to absolutely shutting this thing off, and I was going to appeal to your Honor to rule, within the discretion that is reposed in the Master, to shut off the examination of the witness when it is manifestly outside of any fair inquiry concerning the matters that are under investigation. Now, I must certainly confess to a great deal of amazement that counsel should think of asking this witness whether or not there were rumors current in the neighborhood there to the effect that Senator Clark was back of these land purchases. I don't think that counsel will stand up before your Honor and insist that this testimony is proper to go into this record, that it could be received as testimony under any possible or conceivable state of circumstances, and I do not feel that I can concede

(Testimony of Elijah W. Hoyt.)

for a moment that counsel would stand up before Judge Knowles or before any other court, and say to the court, upon his honor as an attorney, that he thinks that this testimony ought to be received or that it is proper cross-examination of this witness. I conceive, sir, that it is as utterly irrelevant to any matters that are under inquiry here as is the personal character of myself or of counsel on the other side, and I do not believe that this matter ought to be gone into. But now that counsel, if your Honor please, has seen fit to make these statements as to what this witness had told him, I am going to withdraw the objection to having the witness answer the question, but I say here and now, if the Court please, that I do not propose to spend my time in the hearing of this, in investigating the question as to what rumors were current in that neighborhood or any other neighborhood concerning these matters, a question that it does not comport with the dignity of this court or any other court to sit and listen to.

Mr. MAYNARD.—Please read the question.

(Last two questions and answers read.)

The EXAMINER.—Then there is now no question pending.

Q. Mr. Hoyt, do I understand you to say that you had not heard those rumors throughout your neighborhood?

A. Well, rumors—I don't consider them any evidence. I don't know that I want to repeat hearsay; I don't think that is testimony to the Court.

(Testimony of Elijah W. Hoyt.)

Mr. BICKFORD.—This all goes under objection.

Q. Don't try to decide the law, but answer the question.

The WITNESS.—I appeal to your Honor to protect me. I prefer not to answer, if the Court will protect me.

Mr. WALSH.—The witness should not be compelled to answer.

The EXAMINER.—You will not be required to answer that question.

Mr. MAYNARD.—On the ground that it may tend to incriminate himself?

The EXAMINER.—That is all the ruling on that.

Q. Do you remember, Mr. Hoyt, of referring yesterday in a conversation that you had with me, just outside of the courtroom, in regard to the Western National Bank of Missoula? A. I think I told—

Mr. WALSH.—Mr. Hoyt, just answer the question.

A. Referring to it—yes, I do remember that.

Q. Will you please state what you then said about deposits having been made in that bank, to me at that time.

Mr. WALSH.—We object to that, and we ask the Master to instruct the witness that he need not answer that question.

Mr. MAYNARD.—I insist that he shall answer it.

(Testimony of Elijah W. Hoyt.)

Mr. WALSH.—Counsel has made this statement to the court as to what he claims this witness had told him, that he had heard it rumored around the country that Senator Clark had made some deposits in the Western National Bank, and that the bank would honor checks drawn by Cobban and Griswold to pay for this land, and this witness has heard it rumored. Now, he desires to prove by this witness that he made such a statement to him, and we ask the Master to instruct the witness that he need not answer.

The EXAMINER.—Without going into the reasons, the witness may state what that conversation was with Mr. Maynard.

The WITNESS.—I was speaking to Mr. Maynard in relation to this charging everyone with perjury, and I told him I thought he was in the wrong direction if he wanted to find out anything about this matter. I told him that I had heard that Mr. Clark had made a deposit, and I had noticed that the checks were drawn on that bank. That is all the conversation I had with the gentleman about it.

Q. Did you not tell me further in that conversation that you had understood further and had heard that checks drawn by R. M. Cobban and by Jakways & Faust on this money that Senator Clark had deposited in this Western National Bank of Missoula would be honored the same as if drawn by himself?

(Testimony of Elijah W. Hoyt.)

A. I didn't make any such statement; I made no such statement whatever.

Mr. WALSH.—I desire to have an objection go in there to the effect that the question assumes a fact as proven which has not been proven or testified to, namely, that Senator Clark had made a deposit in the Western National Bank of Missoula, Montana, the witness having stated that he told counsel that he had heard it rumored that Senator Clark had made a deposit.

Q. And there was nothing said in that conversation to me at that time and place in regard to Jakways & Faust or R. M. Cobban?

A. I made this statement, that checks was drawn by Jakways & Faust on the Western National Bank and was recognized. I didn't say one word about Mr. Cobban. I said nothing about Mr. Clark saying anything that they should be acknowledged or anything of that kind. I knew nothing about Mr. Clark. I never saw the man and don't know anything about him personally, not one thing.

Q. Now, Mr. Hoyt, we understand each other pretty well, I guess. I didn't ask you for what your personal knowledge on the subject was, but what you told me yesterday in the conversation that I now refer to as to what you understood to be the fact, that you knew that Jakways & Faust had drawn their checks on this bank, and that you understood that it was Senator Clark's money that had been deposited there?

A. Well, that is imagination on your part, sir.

(Testimony of Elijah W. Hoyt.)

Q. Hadn't you heard that?

A. That is imagination.

Q. Hadn't you heard that?

Mr. WALSH.—We object to that. The Master surely can confine the testimony.

The WITNESS.—That is something I don't know anything about whatever.

The EXAMINER.—You may testify to this conversation that you had Mr. Maynard.

The WITNESS.—I have repeated that conversation, your Honor.

Mr. WALSH.—The question has gone outside of that.

Mr. MAYNARD.—But what I am talking about is that in that conversation he told me that he had heard that to be the fact.

Mr. WALSH.—That was not your question.

Q. Well, that is what I ask you now. Did you not in that conversation with me—

A. I think that has been answered about three or four times, and I don't wish to answer any more.

Q. —Tell me that you had heard that Jackways & Faust—

A. I refuse to answer that unless the Court insists upon it. If it does, of course, I will obey the Court, whatever the Court says.

The EXAMINER.—Well, the ruling is to the effect

(Testimony of Elijah W. Hoyt.)

that anything in reference to this conversation he has asked you about, you must answer.

Q. Did you not tell me that you had heard that Jakways & Faust were authorized to draw their checks on this bank in Missoula on money that had been left there by Senator Clark for that purpose, and that the bank—

A. No, sir, no, sir.

Q. —and that the bank officers had been instructed to honor Jakways & Faust's checks and Mr. Cobban's checks the same as if they had been drawn by the defendant, Senator Clark?

A. Oh, that is all bosh, the whole of it, every bit of it.

Q. You deny that you told me that?

A. I didn't tell you in any such manner as that at all, sir. You have put it under a different construction of my language. Furthermore, you told me at the time that anything I said to you was confidential, and now you come into open court and go to work and bring these things up and put your own construction on it, and I think you are abusing me, and I ask the protection of this Court.

Redirect Examination.

(By Mr. WALSH.)

Q. Is there anything further you desire to say about it, Mr. Hoyt? A. No, sir.

Q. Mr. Hoyt, do you remember about the time it

(Testimony of Elijah W. Hoyt.)

was that you had this conversation with Mr. Faust concerning the sale of the timber to Cobban?

A. The first time he spoke to me about it, it must have been the latter part of May, I think, as near as I can recollect. It was before the entries of the land. He was speaking to me about a little timber that was on my homestead. He said there was a man in town that would like to buy the timber on my homestead; that was all the conversation I had in relation to the matter.

Q. That was the occasion that you referred to in the answer that you made to Mr. Maynard, when Mr. Faust told you that he thought maybe Senator Clark was back of these timber purchases?

A. Yes, he expressed himself as thinking perhaps it was so.

Q. What I want to know is when that was?

A. I think it was in May, the latter part of May as near as I can tell. I can't remember the exact date, but it was before there was many entries made of timber.

Q. Now, you had some negotiations, as a matter of course, which finally resulted in your selling the timber to Mr. Cobban, Mr. Hoyt?

A. There was nothing said then. He didn't make any offer nor say anything, only he said this man wants to buy timber.

Q. No, I am speaking about when you eventually did sell?

(Testimony of Elijah W. Hoyt.)

A. Oh, when I eventually did sell, I was at home at my place, and an attorney by the name of Smith, I forget the first initials now, but I don't know but what I have them—came to my house. I can't see to read this paper, but perhaps you can see the initials. It is a gentleman in the land office in Missoula, he told me.

Q. Wallace P. Smith?

A. That was the gentleman. That was sometime after I had proved up and got my register's receipt, and I asked him the first thing if he thought that I had a legal right to sell that timber, and he said yes, there was no question about that at all in law.

Q. You don't need to go into the details of it, but you then opened up the negotiations which resulted in the sale? A. Yes, sir, I did.

Q. Now, I wish you would state whether at any time prior to that time you had agreed or promised to sell to anybody the timber upon this land, either verbally or otherwise? A. No, in no shape whatever.

Q. Or had any negotiations looking to the sale?

A. Nothing whatever; not the first thing in the world.

Mr. WALSH.—We want to go into another matter that was not touched upon, which I overlooked.

Q. You told Mr. Maynard, in answer to a question, that you had said something to Mr. Faust to the effect that you wouldn't pay much attention to what Mr. Griswold had said? A. Yes, I made that remark.

(Testimony of Elijah W. Hoyt.)

Q. Mr. Griswold lives somewhere in that neighborhood, doesn't he?

A. He lived a few miles from me. I had never seen the gentleman then, but I had heard a great deal of him, and I had no confidence in what I had heard of the man at all.

Q. For how long a time had you heard of him?

A. Oh, I presume for four or five years or some such a matter.

Q. You have heard somewhat of him since, have you?

A. Yes, sir, I have.

Q. What reputation does he bear in the community in which he lives for truth and veracity?

Mr. MAYNARD.—I object to that question on the ground that the witness has not shown that he has such a knowledge of the reputation of Mr. Griswold as to authorize him under the law to give testimony on that subject.

Q. Before answering that question, Mr. Hoyt, I desire to ask you if you know what the reputation of Chauncy L. Griswold for truth and veracity is in the community in which he lives.

A. Well, I haven't seen anyone that expressed themselves—

Q. The question is simply, do you know what his reputation is in the community in which he lives?

Mr. BICKFORD.—Answer yes or no.

A. Yes, sir.

Q. Now, you may state what his reputation is in the

(Testimony of Elijah W. Hoyt.)

community in which he lives for truth and veracity; is it good or bad? A. It is bad.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Hoyt, I would like to ask you one or two questions that I overlooked. Will you please tell me how much money you borrowed to make the payment on this entry?

A. Well, I don't believe I can tell you the exact sum; I don't believe I can—

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

Q. What is your answer?

A. I don't think that I can tell you the exact amount. I borrowed some money, but I don't believe that I can tell the exact amount now that I did borrow, just how much, because I had some money by myself of my own, and I borrowed some and gave my note with a signer to the party, running at ten per cent interest.

Q. How much was it?

A. Well, I just told you that I couldn't tell exactly.

Q. You can't remember the amount that you borrowed?

A. No, sir, I couldn't tell you the exact amount to save my life, I don't think.

Q. Was it a thousand dollars?

A. Well, this guessing business is nonsense to me.

Q. Do I understand you to say that in an important

(Testimony of Elijah W. Hoyt.)

matter of borrowing a large sum of money, or a sum of money, to make this purchase of the land a comparatively short time ago, that now on your oath you cannot tell me what the amount was or anywhere near that sum?

A. Well, it is mere guesswork. I couldn't tell you exactly, because I don't remember exactly. You must consider that I am an old man and forgetful, and I can't remember all these little things.

Q. You think that is a little thing?

A. Well, little or big I can't remember it, and that is all there is of it; that ends it right there, sir.

Q. Can you remember whom you borrowed it from?

A. Yes, sir.

Q. Whom.

A. I gave my note to Jakways & Faust; I done the business with Henry J. Faust.

Q. And got the money from them?

A. I got a check.

Q. Their check?

A. I got a check, yes, sir.

Q. Whose check was it?

A. Jakways & Faust's check on the Western National Bank of Missoula.

Q. But you don't know how much that was?

A. I couldn't say, no.

Q. Was it a thousand dollars?

A. I wouldn't say that it was any such amount.

Q. Will you say that it was not that amount?

A. Yes, I will say that it was not that amount.

(Testimony of Elijah W. Hoyt.)

Q. Was it eight hundred dollars?

A. I don't think it was that amount.

Q. Will you say it was not?

A. No, I won't say just what it was, because I tell you I don't remember thea mount, so that ought to end that thing some time or other.

ELIJAH W. HOYT.

Subscribed and sworn to before me this day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

CHARLES H. JEMISON, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Jemison, where do you reside?

A. Clearwater.

Q. How old are you? A. About twenty-six.

Q. How long have you lived up in the Clearwater?

A. Well, off and on for about five years.

Q. Are you a son of the K. Jemison who is here?

A. Yes, sir.

Q. And a brother of Albert's? A. Yes, sir.

Q. Where are you living now?

A. Clearwater.

Q. What is your business?

A. Well, my business at the present time, I am kind of interested in a saloon and hotel.

(Testimony of Charles H. Jemison.)

Q. Keeping a saloon and hotel at Clearwater?

A. Partly interested, yes, sir.

Q. How long have you been running that place?

A. About four months—three or four months.

Q. What did you do before that?

A. Farmed.

Q. Where? A. Around Clearwater.

Q. Who for?

A. Myself and father. I also worked in Missoula off and on.

Q. What doing there?

A. I worked in the undertaking shop awhile, and worked for my brother in law.

Q. Have you been, and seen a good deal of Albert in the last few years? A. Oh, I guess so.

Q. Did you know of his being employed for some time in looking up claims under the Stone and Timber Act?

A. He was looking up timber, yes, sir; he worked for the Government for a while on the survey.

Q. Did you know of his working under Mr. Griswold?

A. I don't know anything about that.

Q. Had you heard that he was?

Mr. WALSH.—Objected to as immaterial and as hearsay.

A. Well, his business is not mine. Who he was working for, I don't know for certain. I am off on a visit at the time, or off on a little trip.

Q. You took up one of these claims?

(Testimony of Charles H. Jemison.)

A. Yes, sir.

Q. Where was you when you first got word that it might be advisable for you to take up this claim?

A. I was home.

Q. Who spoke to you about it?

A. I don't know as anybody.

Mr. BICKFORD.—Objected to as immaterial and irrelevant.

Q. You don't know as anybody? A. No.

Q. Who went with you to look at this land?

A. I went with myself. I don't know for certain whether my brother was with me or not; I know we were around there together.

Q. You mean Albert? A. Yes, sir.

Q. This is your signature? I call the witness' attention to what purports to be his signature to the original statement.

A. That is my name right there; I suppose I signed that.

Q. You did sign that?

A. Yes, to the best of my knowledge. I don't know whether that is the paper I signed or not.

Q. You recognize the description, as the south half of the southwest quarter—

A. Of twenty-eight—

Q. —Northeast quarter of the southwest quarter and southeast quarter of the northwest quarter of section twenty-eight, township fifteen north, range sixteen west? A. Yes, sir.

(Testimony of Charles H. Jemison.)

Q. This was on the 23d of August, 1899, that you made this statement? A. Yes, sir.

Q. James Mize, did he go with you?

A. Well, he was around there at the time, him and Yarger, I believe and Roll, and I couldn't say for certain now who was with me at the time; we was all around there together.

Q. Final proof seems to have been made on the 6th of November, 1899? A. Yes, sir.

Q. How long were you on this land that you took up?

A. Well, I couldn't say to that, how, long it was on it, for I didn't have a watch at the time to tell how long I was on it. I have been onto it, though, a dozen times.

Q. I mean on this day that you went up to mark it out?

A. I was onto it long enough to look it over and see about how much timber I thought was on it.

Q. Can't you say how long you were on there?

A. Oh, I suppose an hour or two, or an hour and a half.

Q. Then did you go to Missoula to make the entry?

A. I did in a few days, yes, sir.

Q. Who did you go with?

A. Well, I think Mize and these other lads went down at the same time.

Q. Did Albert go with you?

A. No, sir; I don't think he did; I am not sure, but I don't think he did; I wouldn't say for sure.

(Testimony of Charles H. Jemison.)

Q. How much money, when you came to make the final proof, did you pay into the land office?

A. Well, sir, Mr. Catlin done it; I think it was about ten dollars, but I wouldn't say for sure.

Q. Oh, the first time you went there?

A. Yes, sir.

Q. Mr. John B. Catlin?

A. Yes, sir; I got him to make out my papers for me.

Q. And he paid the money? A. Yes, sir.

Q. When you went down there to make the final proofs, did he pay the money then?

A. Well, I asked him about borrowing the money, and we heard that Mr. Cobban was in the real estate business, and he told me that he thought he could get the money for me to prove up on, and so I told him to go ahead.

Q. And he got the money? A. Yes, sir.

Q. And on the same day that you made your final proofs and got your receipt, you conveyed to Mr. Cobban? A. No, sir—

Mr. BICKFORD.—We object to that as leading and as being irrelevant and immaterial.

Q. Did you not?

A. I couldn't say whether it was the same day or not.

Q. Don't you remember that fact?

A. No, I don't.

Q. Will you say that you did not convey on the same day that you made your final proofs?

(Testimony of Charles H. Jemison.)

Mr. WALSH.—Objected to as cross-examination of the Government's own witness, and as leading.

A. Well, no, sir, I couldn't say that I did or did not; I don't remember about that, how long it was afterwards.

Q. I show you the certificate of the register, the 6th of November, 1899, the date of the final proofs?

A. Yes, sir.

Q. I now show you the date of your deed, the 6th of November.

Mr. BICKFORD.—You say in the bill of complaint the 11th of November.

The WITNESS.—I think it was the 11th.

Q. Well, here is the deed; it speaks for itself.

A. Compare those two names there, will you?

Q. This is just a copy of it. Do you recollect where you were when you delivered this deed to Mr. Cobban?

A. Yes, sir.

Q. Where?

A. I was in an office there in Missoula.

Q. Who was with you?

A. Well, I couldn't say exactly who was with me.

Q. How much money did you receive yourself?

A. Altogether?

Q. Yes.

A. Well, between five hundred and five hundred and fifty dollars.

(Testimony of Charles H. Jemison.)

Q. You mean that Mr. Catlin paid that much into the land office?

A. No, sir, I don't think he did; he paid about four hundred dollars, between four hundred and four hundred and twenty dollars altogether, I guess, in proving up.

Q. Mr. Catlin paid into the land office for you?

A. About four hundred and eleven dollars, I guess, in the land office.

Q. You didn't receive that money, did you?

A. No, sir.

Q. How much money did you receive yourself; how much was paid to you?

A. Well, let us see. After I sold the claim I received about between one hundred and one hundred and fifty dollars.

Q. Don't you know how much you received?

A. Not exact to a cent, no.

Q. How much was there over one hundred dollars?

A. Well, there was some over a hundred.

Q. How much over a hundred?

A. About a hundred and twenty-five, I guess.

Q. Where did you receive that money?

A. I received it in Missoula.

Q. Whereabouts?

A. I received it from Mr. Catlin.

Q. That is when you delivered this deed?

A. Well, I will withdraw that. Mr. Cobban paid me that money.

(Testimony of Charles H. Jemison.)

Q. In what shape?

A. He gave me a check when I sold him the claim.

Q. A check on what bank?

Mr. WALSH.—We object to that. The check is the best evidence.

A. I don't know where the check was drawed; I cashed it in the Missoula Mercantile Company.

Q. A check on a Missoula bank?

Mr. WALSH.—Objected to because the check itself is the best evidence. A. I suppose so.

Q. You had it cashed at the Mercantile Company?

Mr. BICKFORD.—Objected to as irrelevant.

A. Yes, sir.

Q. Do you know who paid for the advertising?

A. Why, I suppose the man that done my business for me.

Q. Mr. Catlin? A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. What promise or agreement did you ever make with anybody, Mr. Jemison, prior to the time that you had made your final proof upon this land, that you would sell it and convey the land to anybody?

A. I never made no agreement with nobody.

Q. You have also been indicted, Mr. Jemison, for perjury in making this affidavit, alleging that you took the land for your benefit?

(Testimony of Frank B. Arey.)

A. Yes, I suppose so. I never have been notified yet; I am still under bonds, I think.

CHARLES F. JEMISON.

Subscribed and sworn to before me this —— day of February, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

FRANK B. AREY, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Arey, where do you live?

A. Missoula.

Q. How long have you lived there?

A. Why, it is about three and three-quarters years or a little more; pretty near four years.

Q. How old a man are you?

A. Forty-two.

Q. What is your business A. Carpenter.

Q. Where did you live before moving to Missoula?

A. I lived up on the upper Blackfoot for one year. Do you want any further than that?

Q. How long have you lived in Montana?

A. A little over ten years.

Q. You took up a claim, did you not, Mr. Arey?

A. Yes, sir.

Q. And that claim is lot four and the north half of

(Testimony of Frank B. Arey.)

the southwest quarter of section four, township fifteen north, range fifteen west?

A. To the best of my recollection that describes the land.

Q. This was on the 21st of August, 1899?

A. Yes, sir.

Q. And the date of the final proof is on the 27th of October of that same year, and on the same day that you made the final proof, as appears from your deed, you conveyed to Mr. Cobban? A. Yes, sir.

Q. Now, would you be willing, Mr. Arey, to tell us just how you came to take up this claim?

A. Why, yes. There was a friend of mine living up in the Clearwater country, by profession, or occupation rather, a hunter and a guide. He was well familiar with that country, and he said that there was some claims to be had up there. He came down to Missoula and came to my house and told me about this, and said it might be a good plan for us to go and take some, to take us a claim each, as he had never improved his right, nor I hadn't. At that time he was going over into the Idaho Clearwater country, and he said when he returned that we would go up and look the land over. In the course of two or three weeks afterwards he came back, and I went up with him.

Q. What was his name?

A. Dunham, M. P. Dunham. I went up there with him and looked the property over; he told me right where it was located.

(Testimony of Frank B. Arey.)

Q. Had you ever seen it before?

A. I had been in sight of it, but not on it.

Q. I mean had you made any examination of this particular piece before?

A. No, I had simply been in sight of it, but without any thought of ever tackling it.

Q. Then go on.

A. Well, then, he returned to Missoula with me, as he was going back into the Clearwater country, and we made a filing on it; we each filed on a quarter section.

Q. Did Dunham make a filing on his part?

A. Yes, sir.

Q. Had you seen Mr. Cobban before you made the filing? A. Not in regard to the land, no.

Q. Or Mr. Catlin? A. No.

Q. Or Mr. Griswold? A. No.

Q. None of them? A. No, sir.

Q. Did you pay the entry fee at the time of filing.

A. Why, I don't think I did; to the best of my recollection I did not.

Q. Do you know who did for you?

A. No. I can't think. I won't swear whether I did or not. I was thinking of that a few minutes ago, and I couldn't recall whether I did or not.

Q. Did you have any money of your own to make the payment for this entry?

A. Yes, I think at that time I had money enough to have done it with.

Q. Did you do it with your own money?

(Testimony of Frank B. Arey.)

A. That is just what I say I can't recall.

Q. I mean did you have money enough to make any payment?

Mr. BICKFORD.—Is there any payment required when they make their entry?

Mr. MAYNARD.—No, I have gone over the sixty days.

Mr. BICKFORD.—I think you misled the witness.

Q. I mean the register fee of ten dollars.

A. Well, I was trying to recall whether there was or not and I couldn't do it.

Mr. BICKFORD.—They don't require any payment at the time of filing.

Q. Whose money was it that you bought the land with? A. Finally?

Q. When you made your final proof?

A. That was money that I got for that purpose.

Q. Who did you get it from? A. Mr. Cobban.

Q. When did you first see Mr. Cobban in regard to it?

A. I think that same day that I made my final proof.

Q. That was the first time you ever saw him?

A. In regard to the land, I think it was. I had seen Mr. Cobban off and on for over a year.

Q. Nobody had seen you in regard to it at all?

A. No, sir. Mr. Dunham just simply came to me and said that the land was open for entry and that other lands were being taken up around there, and if we were to get in on it we had better hurry.

(Testimony of Frank B. Arey.)

Q. Do you know who Mr. Dunham was working for?

A. No one whatever. I know that for a positive fact, that he was not working for anybody.

Q. So you borrowed the money, did you, from Mr. Cobban? A. Yes, sir.

Q. On the day that you made your final proof?

A. Yes, sir.

Q. How did he give you the money?

A. In cash.

Q. How much did he give you?

A. Why, in the neighborhood of four hundred dollars, I can't say positively the exact amount; four hundred and some odd.

Q. What time in the day did you make this payment?

A. In the afternoon.

Q. Who went with you, Mr. Arey, to the register's office? A. Do you mean as a witness?

Q. Yes, and the attorney.

A. No attorney.

Q. You didn't have any attorney? A. No, sir.

Q. Where did you receive this four hundred odd dollars in cash from Mr. Cobban?

A. In Mr. Cobban's office.

Q. Did he go with you to the land office?

A. No, sir.

Q. Did Mr. Catlin? A. No, sir.

Q. What witnesses did you have?

A. Mr. Dunham and Mr. Tom Bryan.

(Testimony of Frank B. Arey.)

Q. Do you know whether he has testified here as a witness or not? A. Yes, sir, he has.

Q. He is the one? A. Yes, sir.

Q. Had Mr. Bryan been with you up to this land?

A. No.

Q. How long had you known Bryan?

A. For two years.

Q. Had you seen him in connection with this land before he met you at the land office that day?

A. Only as I asked him to be a witness for me.

Q. But he had not been up with you on the land?

A. No, but he had before lived right close in that locality; his home was right there, close, within three miles of it, so he was familiar with the land.

Q. And nobody else went with you to the land office?

A. Well, Mr. Dunham.

Q. How long was you on the land when you looked at it?

A. Oh, an hour, perhaps; just enough to look it over and size it up.

Q. And then you paid in this money that you received from Cobban to the receiver of the land office, did you? A. Yes, sir.

Q. Four hundred and some odd dollars?

A. Yes, sir.

Q. Where did you go immediately from the register's office, the land office?

A. Well, I couldn't say as to that really, where I went immediately.

(Testimony of Frank B. Arey.)

Q. You went shortly after that to Mr. Cobban's office, did you?

A. Yes, in the course of the afternoon I did.

Q. In the course of that same afternoon?

A. Yes, sir.

Q. And conveyed this same land to him?

A. Yes, sir.

Q. And how much money did he pay you then?

Mr. BICKFORD.—We object because it is irrelevant and immaterial.

A. Do you mean in addition to the money he had already paid me?

Q. Yes.

A. Well, it would amount to about five hundred and fifty or sixty dollars to the best of recollection, and deducting that—

Q. Well, deducting the amount that you paid into the land office, how much then did you receive?

A. One hundred and ten dollars.

Q. In what form was that, please?

A. In cash.

Q. And that is what you got out of that deal, is it not? A. Yes, sir.

Q. That is what you made by it?

A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. How long have you been acquainted with Mr. Cobban? A. Why, it is nearly four years now.

(Testimony of Frank B. Arey.)

Q. Where has he lived since you have known him?

A. Missoula.

Q. At the time when you made your final proof on this land, had you bargained or agreed to sell the land to any person? A. No.

Q. Was there any contract or agreement in existence between you and any other person by which the title to the land should inure to the benefit of any other person than yourself? A. None whatever.

Q. At the time when you got this money from Mr. Cobban, was it understood between you that he was loaning you the money? A. Yes, sir.

Q. You were under no obligations to sell the land to Mr. Cobban, were you? A. No, sir.

Q. You say, I believe, that Tom Bryan, one of your witnesses, knew the land prior to the time of your making final proof? A. Yes, sir.

Q. What is your business? A. Carpenter.

Q. And you stated, I think, that you live in Missoula?

A. Yes, sir.

Q. Do you own a home in Missoula?

A. Yes, sir.

Q. Whereabouts is it? A. In South Missoula.

Q. I will ask you to state whether or not you were indicted before the United States Court?

A. That is my understanding of the case, that I was; at least I was arrested and arraigned for that purpose.

Q. And you don't know of having been discharged?

A. No, sir.

(Testimony of Frank B. Arey.)

Q. And you are still under indictment?

A. I presume I am.

FRANK B. AREY.

Subscribed and sworn to before me this 15th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Whereupon a recess was taken until 2 P. M.

LELIA T. BRYAN, a witness produced by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Miss Bryan, where do you live?

A. In Missoula.

Q. In Missoula, did you say? A. Yes, sir.

Q. Are you an unmarried woman? A. Yes, sir.

Q. About how old are you?

A. I am twenty-five.

Q. Twenty-five years old? A. Yes, sir.

Q. What is your father and mother's name? Your father's name, Miss Bryan? A. John Bryan.

Q. John Bryan, did you say? A. Yes, sir.

Q. Where does he live?

A. He isn't living?

Q. Where does your mother live?

A. She isn't living either.

(Testimony of Lelia T. Bryan.)

Q. What is your brother's name?

A. I have three brothers; do you want them all?

Q. Yes, ma'am.

A. One is Thomas B. Bryan, and another is James B. Bryan, and William T. Bryan.

Q. Thomas Bryan, he is your brother that was sworn as a witness in this case, is he not? A. Yes, sir.

Q. You are teaching school, I believe, in Missoula, I believe? A. No, sir, I am not.

Q. You are not? A. No, sir.

Q. What is your business?

A. Well, I am a teacher part of the time; but at present I am not doing anything.

Q. You are not doing anything at the present time?

A. I am not teaching at the present time, although that is my business.

Q. You are not teaching now?

A. No, sir, I am not.

Q. Have you taught this year? A. I have.

Q. Where does Mr. Thomas Bryan live?

A. In Missoula.

Q. Are you living with him? A. No, sir.

Q. What? A. No, sir.

Q How long have you taught school?

A. I taught my first school in 1897.

Q. In 1897? A. Yes, sir.

Q. And have taught how much of the time since then?

A. Altogether, I guess, thirty-six or thirty-seven months.

(Testimony of Lelia T. Bryan.)

Q. I call your attention to this timber and stone land statement, Miss Bryan, and ask you in whose handwriting that signature is? (Counsel hands witness paper referred to).

A. This is mine (witness points to signature of applicant).

Q. This is your signature, Lelia T. Bryan?

A. Yes, sir.

Q. Do you remember the circumstances, Miss Bryan, of coming to Helena on or about the 26th of June, 1899?

A. I do.

Q. For the purpose of making this entry?

A. Yes, sir.

Q. Who did you come with, Miss Bryan?

A. Mr. Gilles, Mr. Lehman, Miss Belle Bryan, I believe that was all.

Q. That was a party of how many?

A. Four with myself.

Q. Four and yourself? A. Three and myself.

Q. Where did you come from?

By Mr. BICKFORD.—We object to that as being leading, and further upon the ground that it is irrelevant and immaterial.

Q. From Missoula?

By Mr. BICKFORD.—We object to that as leading.

Q. Answer the question, Miss Bryan, please.

A. Is it necessary?

(Testimony of Lelia T. Bryan.)

By Mr. MAYNARD.—Well, if there is any particular reason, I don't care.

A. I came from Clearwater.

Q. If there is any embarrassment I will withdraw the question, of course; the entire party came from Clearwater, did it?

A. Miss Belle Bryan and Mr. Lehman came from Missoula, and Mr. Gilles and myself came from Clearwater.

Q. What relation is Miss Belle Bryan, if any, to you?

A. She is my niece.

Q. Your niece? A. Yes, sir.

Q. How old is she? A. She is twenty-four.

Q. What relation is Mr. Lehman, if any, to you?

A A cousin.

Q. And who were the others? A. Mr. Gilles.

Q. What relation is he to you, if any?

A. He wasn't any at that time, he afterwards married my niece.

Q. And is now—and he has died since?

A. Yes, sir.

Q. How long was it, Miss Bryan, previous to your coming here to Helena to make this entry that you had seen this land? A. I don't remember.

Q. You don't remember? A. No, sir, not exactly.

Q. Was it a week?

A. I think it was about the 15th that I was on the land.

Q. I beg your pardon, Miss Bryan?

(Testimony of Lelia T. Bryan.)

A. I think it was about the 15th of the month that I saw the land.

Q. About the 15th?

A. Yes, and I came here on the 26th.

Q. The date of the entry is the 26th of the month, is it?

A. Yes, sir, I think so, I don't remember for sure.

Q. But it was about that length of time?

A. Yes, sir.

Q. How did you—who did you go with to see this land? A. I went with my brother.

Q. With your brother? A. Yes, sir.

Q. Mr. Thomas Bryan? A. Yes, sir.

Q. Who else did you go with at that time?

A. Mr. Griswold and Mr. Lehman.

Q. Chauncey L. Griswold and Mr. Lehman and your brother, Thomas Bryan? A. Yes, sir.

Q. They were with you when you went to see the land that you afterwards entered? A. Yes, sir.

Q. Had you ever seen the land before?

A. I had.

Q. How many times, Miss Bryan?

A. A number of times, I couldn't say how many.

Q. You used to live in Clearwater, did you not?

A. Yes, sir.

Q. How far was this entry from Clearwater?

A. It was about three miles from the ranch where I lived.

(Testimony of Lelia T. Bryan.)

Q. How did you happen to go there?

A. I don't understand what you mean.

Q. How long were you on this land after you were there with these three men on the date that you say you were there? A. How long was I on the land?

Q. Yes. A. Half an hour or more.

Q. What was done during that half hour or more that you were there?

A. We looked at the land and I don't know that there was anything else that we did.

Q. Have you ever seen the land since?

A. Yes, sir.

Q. Any more than simply to pass by—going to Clearwater? A. No, I believe not.

Q. Then after spending half an hour there, where did you go, Miss Bryan? A. I went home.

Q. Where, to Clearwater? A. Yes, sir.

Q. And from Clearwater you came to Helena?

A. Yes, to make a filing.

Q. Will you please state who furnished you the money to come with in coming from Clearwater to Helena to make this entry?

By Mr. WALSH.—We object to that because it assumes a condition of affairs that has not been proven—that is to say, that somebody did furnish the witness with money to come to Helena and therefore it is not a proper question, and for the reason that the question is leading.

(Testimony of Lelia T. Bryan.)

Q. Now, Miss Bryan, kindly answer that.

A. It was borrowed from Mr. Cobban.

Q. Where was Mr. Cobban when you borrowed the money from him?

A. I didn't borrow the money myself.

Q. Did somebody for you? A. My brother.

Q. Mr. Thomas Bryan? A. Yes, sir.

Q. Who, if anyone else beside the parties you have named were here in Helena when you come to make your first papers—file your first entry papers and make your first statement here? A. Again, please.

Q. Was Mr. Cobban here when you first made your statement? A. If he was I didn't see him.

Q. Who came here at the time of making your final proofs in addition to the witnesses here, Mr. Lehman and Mr. Griswold?

A. My brother came and Mrs. Gilles.

Q. And Mrs. Gilles? A. Yes, sir.

Q. Do you know who furnished the money to make the payments that were made when your final proofs were made and paid for the land? A. I do.

Q. Who was it?

A. It was borrowed from Mr. Cobban.

Q. Who borrowed it? A. My brother.

Q. Your brother? A. Yes, sir.

Q. The final proofs in your case were made on the 14th day of September, 1899, and the date of the deed which you executed and delivered to Mr. Cobban was on the 22d day of September; do you remember, Miss

(Testimony of Lelia T. Bryan.)

Bryan, how long you were in Helena after you made your final proofs?

A. I went back the next day, I believe.

Q. Went back the next day?

A. I think it was the next day.

Q. And where were you when you executed this deed to Mr. Cobban, Miss Bryan?

A. I was in Missoula.

Q. In Missoula? A. Yes, sir.

Q. Whereabouts in Missoula?

A. In a certain office there.

Q. Was it in Mr. Cobban's and Densmore's office?

A. I don't remember. Yes, it was.

Q. Who went with you?

A. My sister in law, Mrs. Bryan.

Q. And you executed the deeds, did you?

A. Yes, sir.

Q. Did you receive any money yourself?

A. I did.

Q. How much did you receive? A. $100.

Cross-examination.

(By Mr. WALSH.)

Q. Miss Bryan, you have been indicted, haven't you, in connection with this entry? A. Yes, sir.

By Mr. WALSH.—No further cross-examination.

By Mr. MAYNARD.—That is all, Miss Bryan.

LELIA T. BRYAN.

(Testimony of Jacob F. Jemison.)

Subscribed and sworn to before me this 14th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

JACOB F. JEMISON, a witness produced by the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Jemison, how long have you lived in this country? A. Fourteen years.

Q. How old a man are you, Mr. Jemison?

A. Seventy-two.

Q. Where are you living now?

A. I am living at Clearwater.

Q. Where?

A. Clearwater is my postoffice.

Q. At Clearwater postoffice? A. Yes, sir.

Q. How long have you lived there?

A. Lived there about seven years.

Q. That is, you have lived at Clearwater seven years?

A. That is, I just lived below there about seven miles below, but I always had my mail come to Clearwater postoffice, so that all of my business is done at Clearwater.

Q. Albert Jemison, that was sworn here, and has given testimony in this case, is your son?

A. Yes, sir.

(Testimony of Jacob F. Jemison.)

Q. Does he live with you? A. Yes, sir.

Q. How long has he lived with you?

A. Well, since in the forepart of last winter.

Q. But he has lived in and about your place for a number of years, has he not?

A. Yes, with the exception of one year that I was down in the Bitterroot; I moved down in the Bitterroot one year and lived there and then I moved back to Clearwater; out of the seven years I was away from Clearwater just that time.

Q. You knew of the fact of his working with Mr. Chauncey L. Griswold in taking up claims under the Stone and Timber Act for Mr. Cobban, did you not?

A. Yes, sir.

Q. How long was he engaged in that business?

A. Something like three months.

Q. Did you have a—was he living with you at the time? A. Yes, sir.

Q. How many—I don't mean to say exactly—but about how many entries or locations did he make for Mr. Cobban?

A. Somewhere about thirty or thirty-five.

Q. Do you know most of the entrymen and entrywomen that made up this thirty or thirty-five?

A. Yes, with a few of them.

Q. Well, there were about fifteen of them that were relatives of yours, were there not?

A. Yes, some way or other.

(Testimony of Jacob F. Jemison.)

Q. I think Albert gave us the list and the relationship when he was on the stand?

A. Yes, sir, I presume he did.

Q. Would you be willing to tell us what you know about how it came that some fifteen of your relatives took up the stone and timber claims at this time?

By Mr. WALSH.—We object to that as being entirely irrelevant and immaterial to the issues in this case.

A. Well, I can start right in at the beginning. Me and my wife was at the Clearwater when I was living seven miles below; we were up at the Clearwater—well up beyond Clearwater visiting some neighbors, and on the way home Mrs. Griswold came out and got to talking to my wife and I was sitting there in the wagon listening to the two talking, and she told—

By Mr. WALSH.—We object to what was told by Mrs. Griswold because it is hearsay testimony and not proper testimony to be introduced in this case.

By the EXAMINER.—You may go on with your statement.

A. Mrs. Griswold told my wife that Mr. Griswold was locating persons to take up timber land; she says, I want to see Mr. Griswold. I have been wanting to take up timber land for a good while, and she asked where Mr. Griswold was, and she told us he was up the river a piece locating some persons—no, that he was at the saloon, and just as we started away he met us

(Testimony of Jacob F. Jemison.)

about half way, about half way between the house and the saloon, and started to talk to my wife; me and Mr. Griswold was out at that time, but he talked to my wife and she asked him to locate her, and just as we were starting away I spoke to him, and I says I wish you would locate me too; and he says well, go and hunt up your claim, and he says I will give you a letter to some persons that will furnish you the money to enter it, and that was all that was said. When I got home I told Albert that there was a good prospect now for taking up timber lands and filing on them, and I had been wanting to take it up for seven years. I lived right there in the country for seven years and had timber all around me; one time I applied to Mr. Hammond to get some money and wanted him to furnish me the money to take up the timber. He said he would see about it, but he never spoke to me any more about it. I had been in the timber for the last seven years, and wanted to take up some land, provided I could borrow the money, but every man I asked for money wanted twelve and one-half to eighteen per cent interest, but not knowing when I could sell the land, I didn't want to take it up because the interest would eat up the principal, so I was not willing to take up a piece of timber land and run my chances of selling it; I had been all through that land there hunting with my gun and my dog, and knew what it was; I had no more talk with Griswold.

Q. Did you have any more talk with Griswold after that? A. No, sir.

(Testimony of Jacob F. Jemison.)

Q. Your talk was with your son Albert?

A. Yes, Albert done all the talking.

Q. With you? A. With Griswold.

Q. Was Griswold—and did you have the talk with Albert after he had talked with Griswold?

A. Well, we talked back and forward about it, but there was no contract made or anything of the kind; when I talked to Albert about such things he would say shut your mouth and ask no questions, that is what he would say—shut your mouth and ask no questions.

Q. Well, who went with you to make your location?

A. Why, Albert went with me, but I had been there in the timber with my gun and dog and I guess I had been through it forty times. I knew the land and every path on it.

Q. But Albert went with you and pointed out the land to you?

A. Well, he went with me to three of the corners, yes, sir.

Q. And how long a time after that was it before you went down to Missoula to file your statement?

A. Must have been three and four days or a week before we could get Griswold to go and look at it; he did go on later and look at it and then gave us a letter.

Q. So, did Mr. Griswold have to look at it first?

A. Yes, because those men that he was talking with or knew anything about it trusted in him more than they would me and Albert likely; I don't know what else.

(Testimony of Jacob F. Jemison.)

Q. What was he to look at the land for?

A. To see whether it would be worth taking up.

Q. As to the amount and value of the timber on it?

A. Yes, sir.

Q. Well, he did of your own knowledge; Mr. Griswold passed his judgment on it?

A. Well, I don't know whether he did or not.

Q. But you say you waited three or four days for him to go and look at the land? A. Yes, sir.

Q. Who went down to Missoula with you?

Q. Albert did.

Q. Where did you go when you were with him?

A. I went to Catlin.

Q. Went to Catlin?

A. John B. Catlin; yes, I was acquainted with him.

Q. What did you go there for?

A. To borrow the money.

Q. You didn't need the money at the time you first filed your first statement, did you?

A. No, but I wanted him to write up the papers.

Q. To write up the sworn statement, the papers?

A. Yes, the first papers.

Q. Did he write them up? A. Yes, sir.

Q. How much money did you get from Mr. Catlin at that time? A. Didn't get any.

Q. Didn't get any?

A. No, sir. I was in debt to him.

Q. Did you get any money that day?

A. No, sir.

(Testimony of Jacob F. Jemison.)

Q. Who else was with you with the exception of Albert? A. Nobody.

Q. You made your statement and came home?

A. Yes, sir.

Q. Who was with you as your witness when you proved up?

A. Albert Jemison and Mr. Griswold.

Q. Mr. Griswold did you say? A. Yes, sir.

Q. Did you get any money then?

A. When we proved up?

Q. Yes, sir.

A. I proved up in the forenoon, and then in the afternoon Mr. Catlin took me to Mr. Cobban, and Mr. Cobban bought the piece of land of me.

Q. Mr. Cobban bought the land the same day that you proved up on it?

A. Yes, in the afternoon.

Q. In the afternoon, and you proved up on it in the forenoon? A. Yes, sir.

Q. Where did you get the money to make the payment?

A. Why, I told you I got it from Mr. Catlin.

Q. When did you get it?

A. Got it the day I went to prove up.

Q. Got the money from Mr. Catlin on the same day that you proved up, and on the same day that you proved up you conveyed the land to Mr. Cobban?

By Mr. WALSH.—We object to that as leading, and

(Testimony of Jacob F. Jemison.)

upon the further ground that it is irrelevant and immaterial.

A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Jemison, what agreement or promise did you have, or did you make with anybody prior to the time that you filed on this land?

A. None at all.

Q. Or was anything ever said to you with reference to conveying it to anybody after you had acquired title?

A. Not a word of promise of any kind. My promise and contract was made with Mr. Cobban when I went into his office and saw him; we differed on $3; I made a contract with Mr. Cobban, and we differed on $3 for quite a while, and he finally raised it to $15—that is gave me $515, counting the money that I paid out for the land.

Q. Now, Mr. Jemison, prior to that time I wish you would state what promise or agreement you ever had with him to convey this land to anybody?

A. None at all, as I told you before. I never saw Mr. Cobban until I sold him the land, didn't know there was such a man in the world.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban allowed you $515 for the land?

A. Yes, sir.

(Testimony of Jacob F. Jemison.)

Q. And you borrowed in the morning from John B. Catlin, how much?

A. $412.50, somewheres; I think it was, that it would take to locate it.

Q. Well, what you were haggling over the $3 that was with Mr.Cobban, what was that, Mr. Jemison?

A. Why, I wanted $515, and he wanted to give me $512.

Q. Was there something about the $3 that was to cover some expenses?

A. No, I just tried to get all I could on it.

By Mr. MAYNARD.--That is all.

JACOB F. JEMISON.

Subscribed and sworn to before me this 14th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Friday, February 14th, 10 A. M.

Hearing resumed pursuant to adjournment. Whereupon the defendant recalled JACOB F. JEMISON, for further cross-examination.

(By Mr. WALSH.)

Q. Mr. Jemison, I simply want to know from you, whether you were also indicted for perjury in making this entry? A. Yes, sir.

It is stipulated between the parties that the Examiner may certify to the above testimony, given by Jacob F.

(Testimony of Jacob F. Jemison.)

Jemison this morning, instead of having the witness stay over another day to sign it.

I do hereby certify that the above question and answer have been correctly transcribed.

HENRY N. BLAKE,
Examiner.

GUY W. MUCHMORE, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Muchmore, how old are you?

A. Twenty-four years old.

Q. Are you a brother of Oliver Muchmore, who was sworn here yesterday?

A. It was Albert Muchmore.

Q. You came here with him, did you?

A. Yes, sir.

Q. You were not subpoenaed here until the 18th, were you? A. No, sir.

Q. You came with him and was here yesterday?

A. Yes, sir.

Q. And heard his testimony, didn't you?

A. Yes, sir.

Q. How long have you lived in this State?

A. About twenty-two years.

Q. Twenty-two years? A. Yes, sir.

Q. You lived here all your life then, substantially?

A. Yes, sir.

(Testimony of Guy W. Muchmore.)

Q. Are you a married man? A. No, sir.

Q. Who do you live with?

A. I live alone.

Q. You live alone? A. Yes, sir.

Q. Keep bachelor's quarters, do you?

A. Yes, sir.

Q. Whereabouts?

A. About five miles from Ovando, Montana.

Q. On your own place?

A. Yes, sir; I have a homestead.

Q. You are homesteading, are you?

A. Yes, sir.

Q. Have you acquired it yet? A. No, sir.

Q. You are now in the act of acquiring a homestead?

A. Yes, sir.

Q. How long have you been on this homestead piece?

A. About two years and a half.

Q. Then, in addition to this homestead claim you took up a claim under the Stone and Timber Act, did you?

A. Yes, sir; I took that up first.

Q. Took what up first?

A. The timber and stone claim.

Q. You took that up first?

A. Yes, before I did the homestead.

Q. Then you have homesteaded a piece that you are living on since you took up this stone and timber piece?

A. Yes, sir.

Q. This was on the sixth day of June, 1899, that you

(Testimony of Guy W. Muchmore.)

came here to Helena and filed a statement which I now show you?

A. That is my signature, I believe.

Q. And you made your final proof on the following first day of September, did you not?

A. It was about that date, I don't remember just the date.

Q. You recognize that signature as the signature to the testimony that you gave on that day?

A. Yes, sir; that is my signature.

Q. And on the—eight days thereafter—on the 6th day of September you conveyed the land to R. M. Cobban, did you not?

A. It was a short time after, I don't remember just how long.

Q. Where were you living at the time that you took up this claim?

A. I was living with my father and mother.

Q. What had you been doing before that time?

A. When I wasn't working out, I was working for my father, and when I wasn't I worked as a day laborer.

Q. How far is this description from the home of your father—the east half of the northwest quarter and the east half of the southwest quarter, township 15 north, of range 12 west?

A. I think it is about five miles.

Q. Who went with you to draw out the lines?

A. My brother and my uncle were with me the first

(Testimony of Guy W. Muchmore.)

time I was there. Well, immediately before I came over here to file on the land you might say.

Q. What is that?

A. My brother and my uncle went with me just before I came here to file on the land.

Q. Your brother that was here yesterday?

A. Yes, sir.

Q. What is your uncle's name?

A. Oliver E. Muchmore.

Q. Oliver P.? A. Oliver E. Muchmore.

Q. How long were you on the land?

A. Oh, perhaps an hour or two.

Q. And then shortly thereafter you came here to file, did you? A. Yes, within a few days.

Q. Who came with you at the time you made your final proofs?

A. My brother, my uncle and his wife.

Q. His wife? A. Yes.

Q. Did she make her final proof on that day too?

A. Yes, sir.

Q. What is her name?

A. Elizabeth A. Muchmore.

Q. And your uncle and your brother?

A. Yes, sir.

Q. Was there anybody here at Helena when you came over to make your final proof to assist you in making your proof?

A. No, sir, Mr. McNally was here, he came on the

(Testimony of Guy W. Muchmore.)

same train that we were on, he acted as one of my witnesses.

Q. He what?

A. He acted, I say, as one of my witnesses.

Q. Did you have the money with you to make your payment?

A. Why, my uncle had the money in his possession.

Q. He had the money for you, all three of you, did he not?

A. Yes, sir, he did, a check for the whole amount, for the three claims and he carried the check.

Q. That is to make the three payments for yourself, and for your uncle and your brother? A. Yes, sir.

Q. Did you see the check? A. I did.

Q. How much was it for?

By Mr. WALSH.—We object to that for the reason that the check itself is the best evidence as to how much it was for.

A. I believe it was $1,200, I am not sure. It was about that, I believe it was $1,200 even.

Q. $1,200 even, that would be $400 apiece then?

A. Yes, sir.

Q. And you made your final proof and got a receipt?

A. Yes, sir.

Q. And then shortly afterwards, a few day afterwards, you conveyed this land to Mr. Cobban?

A. Yes, sir.

Q. Whereabouts was that?

A. In Jackway & Faust's store in Ovando.

(Testimony of Guy W. Muchmore.)

Q. Did you go home after leaving Helena before you went to Jackway & Faust's store? A. Yes, sir.

Q. You went from your home to Jackway & Faust's store for the purpose of making this deed, did you not?

A. I believe so, I don't remember now whether we did or not.

Q. How many of you went?

A. My brother and I went there together that evening.

Q. What was that?

A. My brother and I went there together that evening.

Q. That evening?

A. Yes, went there that evening.

Q. You signed this deed there in that store, did you? A. Yes, sir.

Q. Did you see the deed drawn up?

A. No, sir.

Q. Was the deed already drawn up?

A. Yes, sir.

Q. When you got there? A. Yes, sir.

Q. And all that you had to do was to sign your name to it? A. I read it over.

Q. What?

A. I read it over and signed my name to it.

Q. You delivered the deed to Mr. Faust, did you?

A. Yes, sir.

Q. Did you receive any money at that time?

A. No, sir.

(Testimony of Guy W. Muchmore.)

Q. Did you ever receive any money yourself?

A. I received a credit there.

Q. No, but did you ever receive any money yourself, Mr. Muchmore, for this entry from the beginning to the end?

By Mr. WALSH.—We submit, your Honor, that he has answered the question and ought not to be called on to answer it again.

By the EXAMINER.—You can answer the question.

A. I don't understand.

Q. Did you receive any money yourself in person, was any money paid to you?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial to any issues in the case.

A. Well, I didn't receive any money any more than when I wanted money I would go there and draw money, whatever money I had at that time we left with Jackway & Faust; I didn't draw any amount of money, I think a few dollars perhaps once in a while; my brother and myself kept our money there.

Q. But you yourself don't know how the $1,200 that your uncle obtained from Jackway & Faust was obtained, do you?

A. How it was obtained?

Q. Were you present at the time he received the money?

A. Yes, I was in the store; I didn't see him receive

(Testimony of Guy W. Muchmore.)

it though; I had talked with Mr. Faust and he told me I could get money there.

Q. You had talked with him you say?

A. Yes, sir.

Q. What did you say to him in this talk that you had with him?

A. I don't remember what I said. I wanted to borrow the money to make payment for this land, or something to that effect.

Q. How long was it before you came to Helena to make your final proof?

A. I think it was about a week, as near as I can remember.

Q. About a week before you came? A. Yes.

Q. You had already made your filing?

A. Yes, sir.

Q. And you knew the time was to come when you were to make your final proof? A. Yes, sir.

Q. Hadn't you seen him before that time?

A. I never had seen him in regard to this matter at all.

Q. Never had spoken to him about it?

A. No, sir.

Q. Nor to Mr. Jackway? A. No, sir.

Q. Nor to Mr. Cobban?

A. No, sir I had never seen Mr. Cobban.

Q. Nor anyone? A. No, sir.

Q. You just went to Mr. Faust, did you, to see about getting this money? A. Yes, sir.

(Testimony of Guy W. Muchmore.)

Q. Did you speak to him first or did he speak to you first? A. I spoke to him.

Q. And he said that you could have the money?

A. Yes, he said he would let me have the money.

Q. Well were you speaking for yourself then or for your brother and your uncle?

By Judge BICKFORD.—Well, we will interpose an objection to that for the reason that it is irrelevant and immaterial.

A. If I remember right my brother and I went together.

Q. Well, were you speaking for yourself or for your uncle?

A. No, we were not speaking for my uncle, just my brother and myself I believe; my brother and I were together.

Q. How did it happen then that the money was paid to your uncle?

A. Well, Mr. Faust knew that we were getting it all together and he would give the check to any of us that happened around there I suppose.

Q. You received the check then for $1,200 from Messrs. Jackway & Faust and came here to Helena and made your final proofs and then you went home?

A. Yes, sir.

Q. And then a few days afterwards you went down to Jackway & Faust where all of you conveyed the land to Cobban in Jackway & Faust's store, is that so?

(Testimony of Guy W. Muchmore.)

By Judge BICKFORD.—We object to the question upon the ground that it is entirely irrelevant and immaterial to the pleadings and issues in this case and in no way affects the defendant herein.

A. Well, I don't know whether my uncle was there at the time or not; my brother and I were there when we conveyed the land.

Q. And whatever money you got was in the shape of a credit that they extended to you at the store?

A. Yes, sir.

Q. How much was that Mr. Muchmore?

A. Well, I don't remember exactly, it was somewhere I think about $550 or $560.

Q. That is for the three of you?

A. No, for myself.

Q. What?

A. No, for myself; there was about $150 or $160 above the amount that I borrowed to make the payment.

Q. And that is what you got out of your deal for the land over and above your payment?

A. That is what I received for the land.

Q. That is what you received for the land?

A. Yes, sir.

Q. The profit that you made was about $150 you think and that was in the shape of credit at the store?

A. Yes, I could get money if I wanted it.

Q. Certainly? A. Yes, sir.

(Testimony of Guy W. Muchmore.)

Cross-examination.

(By Judge BICKFORD.)

Q. As a matter of fact Messrs. Jackway and Faust are the general traders in that country, are they not?

A. Yes, sir, they are.

Q. They carry on a general merchandising business?

A. Yes, sir.

Q. Do they not at the same time act in the capacity of bankers for yourself and your brother?

A. Yes, they do most of the time.

Q. Had you ever borrowed money from them before?

A. Yes, sir.

Q. Have you ever since borrowed money of them?

A. I don't remember to have borrowed money of them since.

Q. You deal with them at the store generally, don't you? A. Yes, sir.

Q. Did you have debit and credit account there at that time? A. We did.

Q. I will ask you to state what your business is Mr. Muchmore? A. I am a farmer.

Q. Did you ever do any contracting or anything of that kind?

A. Well, yes, I never had any contract of my own or in my own name; my brother almost always attends to that part of it; I always worked with them.

Q. And you work with your brother in connection with these things? A. Yes, sir.

Q. Are you one of those persons under indictment

(Testimony of Guy W. Muchmore.)

now before the United States district court here in Montana? A. Yes, sir.

Q. Have you ever prior to the time of making your final proof upon this timber culture entry bargained for or agreed to sell the timber culture entry or the timber and stone entry? A. No, sir.

Q. Or ever made any contract to do so?

A. No, sir.

Q. At the time when you made your final proof had you in any way made a bargain or contract by the terms of which you were to sell it to any particular person? A. No, sir.

Q. Now, speaking about your homestead entry, Mr. Muchmore, that is agricultural land, is it not?

A. Yes, sir.

Q. The land that you entered under the Timber and Stone Act was timber land, wasn't it? A. Yes, sir.

Q. Had you been acquainted with these tracts of land for a considerable length of time?

A. I had.

Q. Have you—for how long have you known this land, Mr. Muchmore?

A. Oh, I had been out on it several different times, perhaps during the last eight years—I had worked with a surveying party that surveyed that land through there the year before I came there.

Q. Then you were acquainted with the land very well before you made your entry? A. Yes, sir.

Q. Knew about how much timber there was on it?

(Testimony of Guy W. Muchmore.)

A. Yes, sir.

Q. And how much the land would be worth?

A. Yes, sir.

Q. Who else besides Mr. McNally was your witness on the final proof?

A. I believe my brother, Albert Muchmore was; I believe it was him.

Q. I will ask you to state as a matter of fact if it isn't usual to transact your business in the store of Jackway & Faust when you had business to transact of this nature? A. Yes, sir.

Q. Isn't it a fact, Mr. Muchmore, that you borrowed that money to make the trip here to Helena to make your entry upon the land and also to make final proof, and that the money that was paid over and above that which was paid as your expenses went to you directly for the land?

A. I paid for it myself with my own money.

Q. As a matter of fact, Mr. Muchmore, you are in the habit of doing business yourself and have been ever since you become of age? A. Yes, sir.

Q. And paid your own expenses and attended to your own business? A. Yes, sir.

Q. And you and your brother did business together?

A. Yes, we always did business together.

That is all.

GUY W. MUCHMORE.

(Testimony of James Mize.)

Subscribed and sworn to before me this 15th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

JAMES MIZE, a witness produced by the plaintiff, being duly sworn testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

By Mr. WALSH.—I would like to examine this witness for a moment.

By Mr. MAYNARD.—Very well.

Q. Mr. Mize, you have been indicted for perjury in connection with your entering under the Stone and Timber Act, have you not? A. Sir?

Q. You have been indicted for perjury, have you not, in connection with your entry under the Stone and Timber Act?

A. I believe that was some time ago.

Q. That indictment is still pending against you, isn't it? A. Well, I don't know as to that.

By Mr. WALSH.—I represent this man as his attorney in criminal proceedings instituted against him under which he has been indicted and I haven't had any chance to talk with him.

By Mr. MAYNARD.—He is unconscious of the fact

(Testimony of James Mize.)

of the relationship. Do you want to talk with him, Mr. Walsh?

By Mr. WALSH.—Yes, I want to talk with him and advise him not to testify to any matters that may tend to incriminate him.

By the EXAMINER.—Well, you had better have a consultation with him.

(The counsel, Mr. Walsh, withdraws from the room with the witness and about five minutes thereafter returned into court with the witness and stated there is no objection to this man testifying.)

By Mr. MAYNARD.—Mr. Mize, where do you live, please?

A. Victor, Montana.

Q. How long have you lived there?

A. Well, I have lived near there something like—it will soon be ten years.

Q. How far is Victor from Missoula?

A. Well, sir, I believe something like forty miles, I am not certain about the distance.

Q. What is your business, Mr. Mize?

A. Well, for the last ten years generally work by the day, day's work and month's work; I have a little place out there, I am farming now, of my own.

Q. You took up a claim under the Stone and Timber Act, did you not, Mr. Mize, on the 23d of August, 1899?

A. Somewheres near that time.

(Testimony of James Mize.)

Q. I show the witness the signature of James Mize attached to the papers in connection with his entry. Is that your signature, Mr. Mize?

A. Yes, I suppose it is.

Q. It appears by this that on the 23d of August, 1899, and afterwards you appeared before the register down there at Missoula and made your final proofs, did you not? A. Yes, sir.

Q. That is your signature on the 6th of November, is it? A. I guess it is.

Q. The 6th of November, 1899?

A. Yes, sir, that is my signature.

Q. Do you remember who your witnesses were?

A. No, I don't know as I do just now, some of the Jemisons, I think.

By Mr. BICKFORD.—"Son" Jemison—they call him "Son" for a nickname?

A. Yes, sir.

Q. How did you make your final proof?

A. I don't remember whether it was made or not.

Q. On the same date that you made your final proof you conveyed your land to Mr. Cobban, didn't you?

A. How is that?

Q. I say, the same day you made your final proofs you conveyed the land you got from the Government to Mr. Cobban, did you not?

A. Well, I don't remember whether it was the same day or not.

(Testimony of James Mize.)

Q. You remember it was on the same day, the deed bears the date of the 6th of November?

A. I don't remember just what date it was.

Q. The land seems to be the east half of the northwest quarter, the east half of the southwest quarter and the east half of the northeast quarter and the east half of the southeast quarter of section 34, township 15 north, of range 16 west.

By Mr. BICKFORD.—Just read that description over again, Mr. Cooper, please.

(Description read by stenographer.)

By Mr. BICKFORD.—That seems to be half of a section instead of 160 acres.

By Mr. MAYNARD.—I took the description from the deed.

Q. Your wife took up a claim, too, then?

A. I believe she did.

By Mr. MAYNARD.—That seems to include the description of the land taken by the wife of the witness.

Q. How far is this land from your home, Mr. Mize?

A. I don't know the exact distance, it took us two days to drive up there with a wagon and team, that is as close as I can tell you; something like a day's drive from Missoula, I don't know just how many miles it is.

Q. Did you go up to look at this land?

A. Sir?

Q. You went up to look at this land?

(Testimony of James Mize.)

A. Yes, sir.

Q. And your wife went with you? A. Yes, sir.

Q. Who else was in the party?

A. Well, we had a wagon and team of our own.

Q. Just you two?

A. Well, there was others, they had wagons up there looking at the land, but us two made the trip I believe alone.

Q. Well, did others go from Victor at the same time?

A. Yes, Abraham Jemison and his wife went up at the same time, they had a separate wagon themselves.

Q. Abraham Jemison and his wife and you and your wife, and who else, if anyone?

A. Well, I believe that is the outfit that went up.

Q. Well, were there others that went at the same time?

Q. Well, I don't know whether they went at the same time or not.

Q. Well, was that all there was in your party?

A. I don't know whether they went at the same time or not, at exactly the same time.

Q. Well, what do you mean, the day before or the day after?

A. Well, I don't remember whether it was the day before or the day after, or just what day it was, I don't know.

Q. People that lived in Victor?

A. Well, they went then some of them.

(Testimony of James Mize.)

Q. Well, how many were there of you all together after you got up there?

A. I don't remember.

Q. Well, about how many?

A. Well, I suppose if I had time I could count them up and get somewhere near it.

Q. Well, just count them up and get as near to them as you can.

A. Well, about—there was the two Eddys and I can't remember just who they was.

Q. Well, now, just what you think, I don't want you to be more exact than you can about it, give up your best recollection on the subject.

A. Well, I think Mr. Herbert Eddy was there.

Q. Yes? And Abraham Jemison and his wife, and Herbert Eddy and his wife, and you two is six?

A. Mr. Roll was up there, but I don't know when he was there exactly. Thomas Roll was there.

Q. Do you remember some more?

A. It seems as though Mr. Yarger was up there.

Q. Calvin? A. Yes.

Q. You had quite a bunch of people that went up there then?

By Judge BICKFORD.—We object to the conclusions of counsel.

Q. What is it, Mr. Mize?

A. You can call it what you like, I guess.

Q. You camped up there in the mountains, did you?

(Testimony of James Mize.)

A. Sometimes we did.

Q. Well, did you at this time?

A. Well, we camped out when we felt like it, but when we could get into a house where there was something to eat we would do it.

Q. How long were you gone on this occasion?

A. Well, I don't know as I can recollect just how long it is that we were gone.

Q. Well, what would you say, a week?

A. I didn't keep any memorandum of it, of course it must have taken a week or over to make the trip up there and back.

Q. At this time you and your wife made this selection?

A. At the time I was out on that one trip, yes.

Q. Who pointed out the boundaries for you, run the lines for you? A. Mr. Jemison showed us the lines.

Q. Albert Jemison? A. Yes, sir.

Q. Showed you the lines for your lands and the ones for your wife, too? A. Yes, sir.

Q. Did he after he showed you the lines and marked out your claims, did he give you a paper?

A. Did he give me a paper?

Q. Yes, sir. A. Albert Jemison?

Q. Albert Jemison.

A. I don't recollect of him giving me any paper.

Q. Did he give you anything?

A. Well, I believe—I got the numbers of the land.

(Testimony of James Mize.)

Q. And did your wife get the numbers of the land?

A. I think she did.

Q. What did you do with them, Mr. Mize?

A. Do with what?

Q. What did you do with the numbers that he gave you?

A. Well, I don't know just exactly what we did with them.

Q. You don't know what you did with them?

A. Well, when we got the papers on the land we didn't care to keep the numbers on them any longer.

Q. You mean after you came to Missoula and made your filing? A. Yes.

Q. But you had the numbers that Mr. Jemison gave you at the land office when you made the filing, did you not? A. I guess we did.

Q. Who helped you make the filing, Mr. Mize?

A. Well, Albert Jemison—we were looking up the land with him and we was taking up a piece of land at the same time and he attended to most of it.

Q. What do you mean by that—attended to most of what?

A. Well, we wanted to know about getting this filing up, we wanted him to help us.

Q. I mean when you came to the land office at Missoula? A. Well, I am answering your question.

Q. Did you see Mr. Cobban in the meantime?

A. I don't know that I did.

(Testimony of James Mize.)

Q. Do you say that you did not?

A. Well, I don't know as I would exactly say whether I did or did not. I don't recollect whether I saw him before or after.

Q. Did you take this piece of paper that you received from Albert Jemison to Mr. Cobban's office?

A. I don't know that I took it up to his office or not.

Q. What is that?

A. I don't know that I took it to his office, I don't know exactly about it, I went to Cobban's office.

Q. Have you any recollection on the subject?

A. Well, not exactly, not to give the exact date, I can't do that.

Q. Well, have you no recollection as to what you did with this paper containing the numbers of the land which you received from Mr. Jemison, what did you do with that paper?

A. Well, I don't know as I am able to tell what I done with it.

Q. You won't say but what you took it to Mr. Cobban's office, will you?

A. Well, if a man says he don't know what he done with it I don't know how you are going to place it.

Q Did you wife make the filings on the same day that you did? A. The same day?

Q. Yes, the same day. A. I believe she did.

Q. After you made the filing, what did you do then?

A. How is that?

Q. After you made the filings to these two descrip-

(Testimony of James Mize.)

tions what did you do then, did you go back to your home?

A. Well, I don't just recollect what we did do; I believe we did go back home.

Q. Then, afterwards, after the time had run for advertising you made your final proofs? A. Yes, sir.

Q. Where did you get the money from that you paid for the land? A. We got the money of Mr. Cobban.

Q. When?

A. Well, when we went back to make final proofs on the land.

Q. What time in the day did you receive it?

A. I don't know as I can recollect what time it was.

Q. Where did you receive it?

A. Where did I receive it?

Q. Yes.

A. I got the money of Mr. Cobban.

Q. Of Mr. Cobban?

A. Well, whatever his name is, I took up the land, something like you would have to do if you were taking up a homestead.

Q. Well, wait a moment, I didn't ask you that question.

A. Well, you want to know about this, I suppose, I can tell it.

Q. Well, your counsel will give you ample opportunity to go into those matters.

By Mr. WALSH (To the Witness).—Answer the questions that counsel asks you, Mr. Mize.

(Testimony of James Mize.)

Q. I ask you the question what time of the day you got this money of Mr. Cobban?

A. I tell you I don't recollect.

Q. How much did he give you?

A. How much did he give me? I don't recollect just how much money I did get out of it.

Q. Who was present when he gave you the money?

A. I don't know as I can tell who was present.

Q. What did you do with the money that you received from Mr. Cobban?

A. Well, I proved up with part of it.

Q. That is, you paid for the land with it?

A. Sir?

Q. Paid for the land with it, did you?

A. Well, I don't know what you would call it, proving up on the land.

Q. Did you keep any of the money that you received from Mr. Cobban?

A. I don't just recollect whether there was any left or not. There must have been some left.

Q. But when you went to the receiver's office, the register's office? A. What is that?

Q. When you went to the register's office?

A. I believe—to the register's office?

Q. To the land office?

A. Well, I don't know as I am just able to say. Jemison and his wife were two that went; I don't know as I can recall any more names.

(Testimony of James Mize.)

Q. When you made your proofs I mean, when you made your final proofs?

A. I would not say just what witnesses we had to make the proofs.

Q. You don't know what witnesses you had then?

A. No, I don't just recollect the names right now.

Q. Who furnished you the witnesses?

A. How?

Q. Who furnished you the witnesses?

A. I got the witnesses myself.

Q. Did you know that they were to be there on the day that you went to make final payment?

A. Well, I supposed I knew I had to have some witnesses.

Q. Did you know that they were to be there on that day?

A. I made arrangements for them to be there.

Q. How did you make arrangements with them?

A. By speaking to them.

Q. When?

A. I don't know as I can tell what date it was.

Q. Oh you don't know? You don't know who they were?

A. I don't recollect the names, it was some that was in the party there though. I suppose you have the names right there, haven't you?

Q. Yes, of course, they belong to the record. But you ought to have some recollection yourself who the witnesses were.

(Testimony of James Mize.)

A. I know there was some of them there, but I don't know who it was that acted as witnesses, I think Yarger was one.

Q. Have you any—

A. Well, I don't know as I can tell who were our witnesses.

Q. Have you any recollection of when you spoke to the witnesses, and what you said to them?

A. No, I don't know as I do.

Q. After you got through in the land office you conveyed the land—deeded the land—you and your wife, both of you, to Mr. Cobban?

A. I don't know by your question as I can tell the way of it. If you would let a person tell it I could probably tell it so you could get some idea about it.

Q. Very well, what did you do about deeding the land, go on and tell now in your own way.

A. Well, as I started to say some time ago when I took up the land I supposed I was taking up something like a homestead, and that twenty-four or twenty-five dollars would be all that it would take to prove up on it so that I could get a hold of the land, but when I came to locate it it took more money than I had, and, of course, I got the money from Mr. Cobban to settle for the land.

Q. The deed says that it was on the same day that you proved up that you and your wife conveyed to Mr. Cobban?

A. Well, of course, if that is the deed you have got it.

Q. Do you remember where you were?

A. Which, when you got the money?

(Testimony of James Mize.)

Q. When you gave the deed you got the money in the morning of that day, and then you paid it over into the land office, and then you went back to some place and deeded to Cobban, and I am asking you where that place was?

A. When I deeded it I believe it was in his office.

Q. Do you remember who was present?

A. No, I do not.

Q. Did he pay you anything for the land that you and your wife conveyed to him?

A. Well, he paid us something, I don't just recollect what it was he did pay now.

Q. Well, if he paid you something, haven't you any idea what he did pay to you at all?

A. I believe I said I did not have any idea.

Q. Well, was it ten dollars that he paid you?

A. Well, if I knew I would tell you.

Q. Well, can you tell whether you received any money from Mr. Cobban the day you made the deed to the land?

A. I received some for this land.

Q. Well, how much did you receive?

A. I don't know exactly.

Q. Well, if you don't know exactly how much you received, tell us generally how much you received.

A. Well, you have got the answer.

Q. You won't answer because you don't know?

A. I believe I said I didn't know how much I got.

Q. You don't know whether it was $50, $60, $10 or $100, is that what you wish to be understood as saying?

(Testimony of James Mize.)

A. I have told you what I had to say.

Q. And that is the only recollection that you have on the subject that you don't know whether you received any money or not, and if you did, how much?

A. I don't know just how much money I got, that is my answer.

Q. Well, what did you get for this land that you took up?

A. I have just told you that I don't recollect just how much it was.

Q. You took up the land and sold it to Mr. Cobban and don't know how much you got for it?

A. Yes, I don't recollect what I got for it.

That is all.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Mize, was this the only occasion in your lifetime that you ever camped out?

A. No, I think I have camped out before.

Q. Was there anything remarkable about your camping out? A. I don't think there was.

Q. Have you ever worked in the lumber business, Mr. Mize?

A. Some little of that work; I don't believe they recognize me as a lumber-jack, though.

Q. What is the nature of the title you have to this place you now live on? A. What is that?

Q. What is the nature of the title that you now hawe to the place that you live on? A. I suppose it—

(Testimony of James Mize.)

Q. What I want to know is whether you took it up as a homestead or whether you purchased the place?

A. I bought it.

Q. You are farming there now?

A. I don't know as I own it, my wife—the land is deeded to her, we are farming it.

Q. How old a man are you, Mr. Mize?

A. Something like 53, I believe.

Q. Have you any children? A. Yes, sir.

Q. How many? A. Ten, I believe.

Q. Your wife is indicted, too?

A. I believe she was—no, I don't know that she was.

Q. Now, I understood you to say, Mr. Mize, that you didn't understand the details of the law concerning the taking up of these timber claims at the time you made your selection of the claim and filing on it?

A. I didn't understand that it took so much money to prove up on it.

Q. Well, what promise or agreement did you make with anyone, or to anyone, prior to the time that you filed on this land that after you got title to it you would convey it?

A. Didn't make any promise or agreement.

Q. Did you make any promise to anybody that you would do so? A. No, sir.

Q. Now, I ask you the same thing with reference to the time you made final proof, what promise did you make to or agreement with any person prior to the time you made final proof that you were to convey the land?

A. I didn't make any promise.

(Testimony of James Mize.)

Q. Well, how did you come to get this money from Mr. Cobban, Mr. Mize?

A. Well, after I found out I had to get the money to make the payment on the land why I borrowed the money. That is all.

By Mr. MAYNARD.—No further examination.

JAMES MIZE.

Subscribed and sworn to before me this 15th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

At this point an adjournment was taken until ten o'clock A. M. February 15th, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM A. CLARK,
Defendant.

Certificate of Examiner.

To the Judge of the Above-entitled Court:

I do hereby certify, that under the order of said Court made and entered in said case upon the first day of October, 1901, and in pursuance of the stipulations and agree-

ments of the above-named parties, I continued to take the testimony therein at my office in the city of Helena, in said district; that George H. Macdougall, Charles H. Cooper and Charles W. Blair, the duly appointed stenographers, took the testimony of the witnesses in shorthand and transcribed the same; that the following named persons were called as witnesses, and appeared personally before me, and were duly sworn to testify to the truth, the whole truth, and nothing but the truth: Hannah B. Arey, Leonard Barrott, Harriet F. Bryan, Frank B. Chattin, Charles Currey, George Dildine, Cora Dodd, Edward Dodd, Hiram Dodd, Edward D. Doney, Herbert Eddy, Mary Eddy, William J. Eddy, Joshua C. Gilman, Lavinia I. Gilman, Abraham J. Jemison, Charles Jemison, Eveline Jemison, Zora Jemison, Thomas Kennedy, Ollie Matthews, Rolla Matthews, John S. Miller, Laura S. Roll, Thomas Roll and James W. Wheaton.

That said witnesses were examined by counsel for the respective parties, and their testimony is contained in this volume III, pages 1133 to 1720, inclusive; that said witnesses, with the exception of Hiram Dodd, Charles Jemison, and Eveline Jemison, respectively, read, corrected, subscribed and verified their testimony before me at the times hereinafter mentioned; and that by stipulation of the parties, I certified that the testimony of said Hiram Dodd, Charles Jemison, and Eveline Jemison had been correctly transcribed, after the correction and reading thereof.

Dated this 17th day of March, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

(Testimony of Herbert Eddy.)

Saturday, February 15th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment. Whereupon HERBERT EDDY, a witness for complainant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Eddy, where do you live?

A. I live in the Bitterroot valley; Victor is my address.

Q. How far is Victor, and in what direction from Missoula?

A. It is south, I should judge, very nearly, up the Bitterroot valley.

Q. How many miles from Missoula?

A. Well, I am not positive whether it is thirty-five or forty miles to Missoula. It is somewhere in that vicinity.

Q. How long have you lived there?

A. About ten years.

Q. Are you a married man? A. Yes, sir.

Q. What is your wife's first name? A. Mary.

Q. What is your business?

A. Farming; ranching, they call it mostly, I believe.

Q. How much of a farm have you up there?

A. I have a hundred and sixty acres.

Q. How long have you owned it?

A. I have been living on it about eight years; I got a patent on it about four years ago.

Q. Did you homestead it?

(Testimony of Herbert Eddy.)

A. Yes, sir—no, I pre-empted it.

Q. And four years ago you made your final payments on it?

A. Yes, sir, I should judge it was, I am not positive; I should think it was as long as that, anyway.

Q. Have you any other property besides that?

A. I have stock.

Q. On the place? A. Yes, sir.

Q. Anything else?

A. Well, farming utensils and things of that kind.

Q. Just what you use to run the farm with?

A. Yes, sir.

Q. Do you live near some of Albert Jemison's relatives? A. I do, sir.

Q. Who are they?

A. Well, there is Mr. Thomas Roll, Mr. J. C. Gilman, and I think that is all that lives right around close to me.

Q. And others live a little further away?

A. Well, they have got a daughter married that lives in that part of the country.

Q. How many, in your best judgment, of Albert Jemison's relatives live around within five or ten miles of Victor?

A. Well, there is only three families that I know of—well, there is four; there is another brother of Tom Roll's, a brother in law, that I didn't think of.

Q. What is his name?

A. His name is Philip Jemison; they call him Phil.

Q. Now, Mr. Eddy, do you remember of some time in

(Testimony of Herbert Eddy.)

the summer of 1899 that you and your wife left your home in Victor, in the Bitterroot valley and went down to Missoula, forty or fifty miles, and then fifty or seventy-five or a hundred miles up into the Blackfoot?

A. Yes, sir.

Mr. BICKFORD.—The road is getting longer since yesterday.

The WITNESS.—Well, it is up in that neighborhood, anyway.

Q. You and your wife went up there?

A. Yes, sir.

Q. Who went up there besides?

A. Mr. Roll and Mr. Yarger.

Q. Calvin Yarger? A. Yes, sir.

Q. For what purpose did you four leave your homes in the Bitterroot, and go away up into that country?

A. To take up land under the Stone and Timber Act.

Q. Had you ever been up in that country before?

A. I had not.

Q. Have you ever been there since?

A. No, sir.

Q. And the sole time that you ever was up in that country was the time that you located your claim?

A. Yes, sir.

Q. Now, will you please tell me how it was that you made that pilgrimage up there?

A. Well, I heard that there was a company coming in—

(Testimony of Herbert Eddy.)

Q. Let me ask you one question first. It is a fact, is it not, that Albert Jemison had written a leter down to his relatives in the Bitterroot, telling them of the fact—

A. That they could take up claims, yes sir.

Q. —under this Stone and Timber Act?

A. Yes, sir.

Mr. BICKFORD.—We object to that as leading.

Q. Did you hear the letter read, Herbert?

A. No, sir; I did not.

Mr. BICKFORD.—We ask that the witness be allowed to go on and answer the question as he started to.

Mr. MAYNARD.—I will withdraw the question, and take another method.

Q. And where were you informed that this letter had been received?

A. Well, in my neighborhood, there; I don't just remember where.

Q. Did you go to see about what the information was in the letter?

A. I went to see; yes, sir.

Q. Where did you go?

A. I think I was down at Mr. Roll's.

Q. And he is a brother in law of Albert Jemison?

A. I believe so; yes sir.

Q. And you saw Mr. and Mrs. Roll in regard to the matter? A. No, I saw Mr. Roll.

Q. And you had a talk with him about it?

A. Yes, sir.

(Testimony of Herbert Eddy.)

Q. And then, after you had had this conversation with Mr. Roll, Albert Jemison's brother in law, in regard to the matter, you and your wife and the other two went up into this country? A. Yes, sir.

Q. How long did it take you to go up there?

A. I should judge it took about four days to go up.

Q. And, of course the same length of time to come back?

A. Yes, sir; and we was there, I should think, a week.

Q. Where did you stay, Mr. Eddy, during the week?

A. In the woods.

Q. Camped out? A. Yes, sir.

Q. How many were there of you in that camp?

A. Oh, there was six or seven.

Q. Your party of four were joined by others, were they not?

A. Well, there was this Mr. Albert Jemison, and another man or two.

Q. Had you ever seen him before?

A. Yes, sir.

Q. Before you went up there in the woods?

A. Yes, sir; he used to live in the Bitterroot. That was the reason I went to him, I was acquainted with him.

Q. Was Albert Jemison up there in the woods when you got up there? A. Yes, sir.

Q. What was he doing?

(Testimony of Herbert Eddy.)

A. He was helping run out lines and was locating people, I believe.

Q. And he located you, did he not, and your wife?

Mr. WALSH.—We object to this as leading.

A. Yes, sir.

Q. And while you were up there in the woods, and you met Albert Jemison, he told you what you could do, did he not?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. What did he say, Mr. Eddy?

A. Well, I didn't—

Mr. BICKFORD.—We object to that as hearsay, also as irrelevant and incompetent.

Q. What did he tell you in that conversation that you had with him?

Mr. WALSH.—The same objection.

A. Well, I was kind of disappointed with the timber and the country, and I didn't think that I wanted to raise money on my stuff to pay for the timber, and he said that I could borrow the money of Mr. Cobban. He told me that, so I took the claim and borrowed the money of Mr. Cobban, and gave him my note, and I was to try and see what I could do with the claim. I had a chance to sell it to whoever I was a mind to, and see what I could do.

Q. Was that what he told you?

A. Yes, sir.

(Testimony of Herbert Eddy.)

Q. What else did he say?

A. He didn't say nothing more then.

Q. How long afterwards was it before he took you to show you this land; had you seen the land at that time? A. Yes, sir.

Q. Had he drawn the lines for you? A. Who?

Q. Albert Jemison.

A. Yes, sir. That was when I was to make the payment that I got the money from Cobban.

Q. No, no; I am now talking to you about when you were up in the woods there. He took you to point out the land that you were to take up, did he not?

A. Albert Jemison; yes, sir.

Q. And who went along with you?

A. Well, this party that I mentioned, Mr. Yarger, Mr. Roll and—

Q. They all went at the same time?

A. Yes, sir.

Q. Did he point out the different descriptions at the same time?

A. Well, no. Each one of us followed the line for the one that took the claim and kind of looked over the claim, and when I had my own located, why, I went and helped follow the lines for some other one of the party and looked over their claim.

Q. And Mr. Jemison gave you the numbers?

A. The numbers; yes, sir.

Q. So that you would be able to know what land you had taken up?

A. Well, I suppose I could find out.

(Testimony of Herbert Eddy.)

Q. He gave you the numbers?

A. He did at the time; yes, sir.

Q. Did he give each one?

A. Yes, sir.

Q. After you had located your lands in that way, and the others, you went home, did you?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. Did you stop at Missoula first?

Mr. WALSH.—Objected to as leading.

A. Why, I don't think that we filed on the land before we went home; I am not sure whether we filed on the land before we went home, or whether we came back to file on it.

Q. You had this paper with the numbers on it?

A. Yes, sir.

Q. What did you do with that paper?

A. Well, I am sure I can't tell you now.

Q. Didn't you give it to anybody?

A. No, I don't think I did.

Q. Please try and recollect if you can; did you throw it away?

Mr. BICKFORD.—We object to that because the witness has already stated that he doesn't know what he did with the paper.

A. I don't remember what I did with it. After I filed, I don't know what did become of the paper.

Q. What did you do with it before you filed?

(Testimony of Herbert Eddy.)

A. I suppose I took it to the land office.

Q. Had you been to Mr. Cobban's affice, or did you go there at all before you went to the land office?

A. I might have; yes, sir.

Q. Can't you say?

A. I think I did; I think I went there before we went to the land office.

Q. What went with you?

A. Well, the rest of the party, my wife and—

Q. The party went with you to the land office?

A. Yes, sir.

Q. And to Mr. Cobban's office?

Mr. WALSH.—Objected to; leading.

A. I think they did.

Q. What did you do there, Mr. Eddy?

A. I don't remember of doing anything there when we went to file.

Q. At Mr. Cobban's office, before you went to the land office at all?

A. I don't think I did; if I have, I have forgotten.

Q. You might have presented that paper that you got from Albert Jemison to Mr. Cobban or somebody in his office, might you not?

Mr. BICKFORD.—Objected to as leading.

A. I don't remember of it.

Q. You won't say but what you did, will you?

Mr. WALSH.—Objected to; leading.

A. I have no idea.

(Testimony of Herbert Eddy.)

Q. Have you any recollection at all as to any purpose that you had in going to that office?

Mr. BICKFORD.—Objected to as leading; and further that it is an effort on the part of counsel to cross-examine his own witness, and for the reason that the witness has already stated that he does not know what became of the paper concerning which the question is asked.

A. No, sir; not at present..

Q. How did you happen to go to the office at all?

Mr. BICKFORD.—The same objection.

A. Well, as far as I can remember now, the rest of the party went and I went with them.

Q. How many were in the party?

A. Well, there was my wife and Mr. Yarger and Mr. Roll; I don't remember of any more.

Q. How long were you there at the office?

A. Probably it might have been five or ten minutes, may be a little longer.

Q. Did you all leave the office together?

A. Very nearly so.

Q. Did anybody from the office of Cobban go with you to the land office? A. I don't think they did.

Q. You don't remember seeing any of these papers that Jemison gave you, or similar papers around in Cobban's office, or presented to anybody in that office on that day?

Mr. BICKFORD.—Objected to as leading.

A. Why, no. All they gave me up there where I

(Testimony of Herbert Eddy.)

took the claim was a little slip of paper with the numbers and the witnesses.

Q. Did the others in your party have similar papers?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. Had you ever seen Mr. Cobban up to this time?

A. Up to what time?

Q. That you went to his office? A. No, sir.

Q. Did you see him on that day?

A. I think I did.

Q. Did you have any conversation with him?

A. Not particular, that I know of.

Q. Do you remember that you told him that you belonged to a party that Albert Jemison sent down?

Mr. BICKFORD.—Objected to as leading.

A. No, sir; I did not.

Q. There was not anything said about Albert Jemison? A. No, sir.

Q. Nor you did not see any of these papers delivered to him or anybody there in the office, these papers with the descriptions of the land and the witnesses marked thereon that you say each of them had—you did not see any of these delivered in Mr. Cobban's office?

A. Well, I don't recollect of them being delivered there.

Q. Nothing said about them?

A. Not that I remember of.

Q. There might have been?

Mr. BICKFORD.—Objected to as leading.

(Testimony of Herbert Eddy.)

A. Well I don't recollect of it.

Q. You won't say but what there was, will you, Mr. Eddy?

A. Well, I don't remember; I forget.

Q. And you don't know for what purpose you or the party went there at all?

A. Why, if we went there, I suppose it must have been for some purpose to file on the land.

Q. But you don't know what it was?

A. No, sir, I don't know why I should go there to file on a piece of land.

Q. Now, then, you did go to the land office and signed your name to this statement, did you not?

A. Yes, sir, I signed that.

Q. That is your signature?

A. Yes, sir.

Q. That is your signature to the timber and stone land statement which was made in the land office at Missoula, Montana, on the 19th of August, 1899, in which you say you desire to purchase the east half of the northeast quarter and the east half of the southeast quarter of section twenty-eight, township fifteen north, range sixteen west in the district of land subject to sale at Missoula, Montana? A. I signed there, sure.

Q. That is your signature again, is it?

A. Yes, sir.

Q. This is at the time you proved up, the testimony that you gave and signed at the time of proving up, which was on the 27th of October, 1899?

(Testimony of Herbert Eddy.)

A. Yes, sir.

Q. And your wife was with you on each of these occasions, was she not? A. Yes, sir.

Q. And she proved up on hers at the same time?

A. Yes, sir.

Q. And on the day that you both proved up, on the 27th of October, you on that very day, both in one deed, conveyed both descriptions to Mr. Cobban?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. Is that so?

A. I think along in the afternoon.

Mr. WALSH.—The deed itself is the best evidence.

Mr. MAYNARD.—I offer the witness the certified copy of the deed which has been offered in evidence, marked Exhibit No. 12.

Q. You remember the fact of your executing that deed, do you not? A. Yes, sir.

Q. How long a time, Mr. Eddy, were you in the land office when you first made your statement—when you made your first statement?

A. You mean when we went to file?

Q. Yes, when you filed in the first place, how long did it take you there?

A. Well, I don't remember; it was not a great while. I don't think it was over half an hour; I am not sure.

Q. And during that time how many statements were filled out?

(Testimony of Herbert Eddy.)

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. Well, there were four—three or four.

Q. When you went to make your final proof, how many made their final proofs on that day with you?

A. There were four or five.

Q. Do you remember the fact of your being there?

A. At the office, yes, sir.

Q. You remember it well, do you?

A. I remember that I was there, yes, sir.

Q. What took place there when you went to make your final proof? A. (No answer.)

Q. Do you remember the fact of certain questions being put to you? A. Yes, sir.

Q. And they were filled in?

A. Yes, sir, by the recorder.

Q. By the officer there? A. Yes, sir.

Q. Just testify now as to what took place there?

A. Why, each one of us had—

Q. He read those questions over to you?

A. Yes, sir.

Q. And filled them out? A. Yes, sir.

Q. How long did that take?

A. I should judge fifteen or twenty minutes apiece.

Q. Went right along and filled them out?

A. Yes, sir.

Q. And were there any other questions asked you besides that?

(Testimony of Herbert Eddy.)

Mr. WALSH.—We object to all of this as immaterial and irrelevant, there being no allegations of any irregularity or misconduct on the part of the officers in taking the proof concerning these entries.

A. I don't think so.

Q. Now, Mr. Eddy, do you remember where you were between the 19th of August when you made this statement and the 27th of October, the day that you made your final proofs and deeded to Mr. Cobban with your wife? A. I was at home.

Q. Working on your place? A. Yes, sir.

Q. Did you see anybody in the meantime in regard to this entry of yours?

A. I don't know as I know what you mean.

Q. I mean after you filed your statement and during the intervening time, had you seen anybody in regard to this matter? A. No, sir.

Q. You stayed at home and attended to your business. Did you know anything about a notice that was published in the paper in regard to the matter?

A. Yes, sir, my notice was published in the paper.

Q. What do you know about that?

A. Well, I remember seeing it in the paper several times in regard to my claim.

Q. Did you take the paper?

A. Yes, I took the Helena paper.

Q. It was a family paper?

A. Well, I didn't either. It was my father in law.

(Testimony of Herbert Eddy.)

Q. Your father in law took the paper and you saw the notice there? A. Yes, sir.

Q. Do you know how it got in there?

A. I can't say as I do.

Mr. BICKFORD.—I would suggest to Mr. Maynard that it is the business of the land office to see to the publication of the notice, and of the attorney of the party.

Q. You didn't select your witnesses, did you?

Mr. WALSH.—Objected to as leading.

A. Well, they was selected out of our party there: I don't know as I individually selected.

Q. Those witnesses were, as you say, put on the paper by Albert Jemison?

Mr. BICKFORD.—Objected to as leading.

A. No, I don't think they were; I think they were put on by Mr. Kilburn.

Q. E. R. Kilburn? A. I couldn't tell you.

Q Had you ever seen him before?

A. I had not.

Q. Did he seem to be assisting Mr. Jemison up there?

Mr. WALSH.—Objected to as asking for a conclusion of the witness, and also leading.

A. Yes, sir.

Q. And you answer yes?

Mr. WALSH.—The same objection to this.

A. Yes, sir.

(Testimony of Herbert Eddy.)

Q. It appears in this notice that Calvin Yarger and Mary Eddy—that was your wife? A. Yes, sir.

Q. — at Victor, Montana, and Albert Jemison and E. R. Kilburn of Clearwater, Montana, were named as witnesses?

A. I believe they were, yes, sir. Come to think about it, I believe Mr. Catlin made out my filing papers or something to that effect; I believe they had to be made out.

Q. And it seems that of these witnesses that were named in the printed notice, Calvin Yarger and E. R. Kilburn appeared at the land office at this time?

A. Yes, sir.

Q. Where does Calvin Yarger live?

A. Up the Bitterroot valley, close to where I do.

Q. Did he go down to the land office with you?

A. Yes, sir.

Q. At the time of the filing? A. Yes, sir.

Q. I mean at the proving up, when you proved up?

A. Yes, sir.

Q. And you met Mr. Kilburn there?

A. Yes, sir; at the time of the proving up?

Q. At the time you made your proofs, yes.

A. Why, I think so; I am not sure whether it was the filing or the proving up.

Q. You never had seen him before? A. No, sir.

Q. Didn't know who he was? A. No, sir.

(Testimony of Herbert Eddy.)

Mr. BICKFORD.—We object to all of those questions as leading.

A. Not before I saw him up there when I took up the land.

Q. And hadn't seen him after that time until you saw him if you did at all, at Missoula?

Mr. BICKFORD.—The same objection.

A. No, sir.

Q. Do you remember the fact of meeting him at Missoula? A. I don't think he was there.

Q. Have you ever seen him since?

A. I have not.

Q. Now, when you went down on this 27th day of October to make your final payment for this land, you was to buy one hundred and sixty acres of Government land at two dollars and a half an acre, and when you started from your home for the purpose of going to the land office to make your final payment, did you have a dollar in your possession?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. When I went to make the final proof?

Q. Yes.

A. (Laughing.) Well, I don't know; I expect likely I had a dollar.

Q. Well, you didn't have money enough to make your payment, did you?

(Testimony of Herbert Eddy.)

Mr. WALSH.—You ought to have asked him that in the first place.

Q. What do you say?

Mr. WALSH.—Objected to as leading.

A. No, sir.

Q. And at that time had you made any arrangement whatever with anybody by which you could get money to make that payment?

Mr. WALSH.—The same objection.

A. Why, I had made arrangements to borrow the money.

Q. You had? A. Yes, sir.

Q. Who with? A. Mr. Cobban.

Q. When had you seen Mr. Cobban?

A. Why—(hesitating.)

Q. Can you answer that question?

A. Well, some time prior to that—I don't know as I can exactly. It might have been when I filed on the land or something of that kind. This was when I was to prove up on it and pay for it.

Q. But you don't know?

A. It might have been then; I expect it must have been then, because I don't remember seeing him afterwards until then.

Q. But on this 27th day of October, the day that you did make your final proofs, you and your wife, did convey to Mr. Cobban—on that day you got the money from him, did you not?

(Testimony of Herbert Eddy.)

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, I borrowed the money from him and gave him my note.

Q. Anyway, you got the money on that day?

A. Yes, sir.

Q. On the day that you made your final proofs and the day that you conveyed to him. Where did you get the money? A. I got it of Mr. Cobban.

Q. Whereabouts? A. At his office.

Q. What time in the day?

A. I couldn't tell you; it was sometime in the forenoon, I think.

Q. Who was present?

A. I think my wife was, and Mr. Roll, maybe.

Q. How much money did he give you?

A. I don't recollect now.

Q. How many hundred dollars?

A. I don't remember.

Q. He gave you enough to pay for the land, didn't he? A. Yes, sir.

Q. For both descriptions? A. Yes, sir.

Q. Did he give it to you in currency?

A. Yes, sir.

Q. Did you take the money yourself?

Mr. WALSH.—Objected to as leading and as an improper manner of examining any witness.

A. I think I did.

(Testimony of Herbert Eddy.)

Q. What did you do with this money and where did you go immediately after you left Mr. Cobban's office?

A. I went to the land office as near as I can remember.

Q. And paid the money at the land office?

A. Yes, sir.

Q. And you got the register's final receipt?

A. Yes, sir.

Q. And then what did you do, Mr. Eddy?

A. Well, then, I—

Q. You went right back to Mr. Cobban's office, didn't you?

Mr. WALSH.—Objected to as leading.

A. No, sir, not in the first place. There was some of our party went to the Big Blackfoot Milling Company's office to see what they could do.

Q. But I am asking about you?

A. Well, I didn't go. They told me that they couldn't do any better than they could do right there.

Q. In your best judgment, how long after you paid this money to the land office and got your receipt, before you and your wife were back again in Mr. Cobban's office?

A. Well, I should think three or four hours.

Q. And there you executed and delivered the deed that I have shown you? A. Yes, sir.

Q. And how much money then were you paid by Mr. Cobban?

(Testimony of Herbert Eddy.)

A. Well, I was paid one hundred dollars.

Q. And your wife got one hundred dollars, too?

A. Yes, sir.

Q. And that is what you made out of the transaction?

A. Yes, sir, and that was all I thought the timber was worth in the condition it was in.

Q. Now then, Mr. Eddy, what you did on that day and the one hundred dollars that you received and the one hundred dollars that your wife received, Mr. Jemison, when you were up in the woods at the time he located you, he told you that you could get this hundred dollars then, did he not?

Mr. WALSH.—Objected to as leading.

A. He told me I could borrow the money of Mr. Cobban to prove up on, and I didn't consider—

Q. And then you could sell the land?

Mr. WALSH.—Wait a minute. Let the witness answer.

A. I could sell the land to whoever I was a mind to. The understanding was I could sell the land to who I was a mind to.

Q. And you could sell to Mr. Cobban?

A. Well, I believe something of that kind; I don't exactly remember, but I was in no—

Q. But that you could—

Mr. WALSH.—Just a moment; let the witness answer.

(Testimony of Herbert Eddy.)

A. —there was nothing binding me that I should sell it to Mr. Cobban.

Q. But that you could sell it to Mr. Cobban, and that he would give you an advance of one hundred dollars?

Mr. BICKFORD.—Objected to as leading.

A. No, I don't think he would give me one hundred dollars in advance.

Q. Well, that he would pay you one hundred dollars for the land and that you could make one hundred dollars out of it, and you did?

Mr. BICKFORD.—The same objection.

A. Yes, sir.

Q. And you did?

Mr. WALSH.—The same objection.

A. Yes, sir, something to that effect, I believe, and I considered that that was all the brush and rock was worth.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Eddy, how much stock have you got on your ranch up there?

A. Well, the stock is between me and my brother; it is undivided. There is about twenty head of cattle and two team of horses.

Q. What kind of crops do you raise?

A. Wheat and oats and hay.

(Testimony of Herbert Eddy.)

Q. Do you raise any fruit?

A. I have got twelve acres of orchard.

Q. How much family have you got?

A. My wife and four children.

Q. You and your wife have both been indicted for perjury in making these entries, have you not?

A. Yes, sir.

Q. Now, you were going to tell, Mr. Eddy, how it was that you came to go up into the Blackfoot country there, when Mr. Maynard interrupted you. I wish you would now go on and tell how it came about.

A. Well, it was through a letter that first put me in mind of it, that some of our neighbors got down there, and I think some more went up there.

Q. You were going to tell what the information was that was conveyed by this letter that induced you to go up there and make these entries.

Mr. MAYNARD.—He said he didn't see the letter.

Mr. WALSH.—Yes, but you asked him all about it.

Q. What was the information that you got, however it came, that induced you to go up there?

A. Well, something about a company, an eastern company that was going to locate a mill up there or something like that, and we could go up and take land, and some way that fell through; they didn't come, so we were disappointed.

(Testimony of Herbert Eddy.)

Q. But it was represented to you that some company was going in there to build a mill?

A. Yes, sir.

Q. And that, as you understood it, would make a market for the timber?

A. That is what I understood, yes, sir.

Q. Did you ever work in the timber yourself, Mr. Eddy? A. I have, yes, sir.

Q. In what capacity; what did you do?

A. I have worked in the woods, sawing logs and things like that.

Q. And you have been through the timber before, then? A. Yes, sir.

Q. And you know something about the value of timber? A. Yes, sir.

Q. What experience have you ever had in going through timber with a view to estimate the amount of timber there is upon a particular tract of land?

A. Well, I have some, not very much.

Q. You are able from your experience to make some fair estimate, then, of the amount of timber there is on a tract and its value?

A. I think so, yes, sir.

Q. Now, did this seem to you, Mr. Eddy, a great undertaking, to go that distance with these people that you went with?

A. Well, yes, rather.

Q. Quite a trip?

A. Yes, at the time of year and so on.

(Testimony of Herbert Eddy.)

Q. Was that the first time that you had ever camped out in the woods? A. Oh, no, no.

Q. The matter of camping out in the woods was not a very extraordinary thing with you, I take it?

A. No, sir, not as far as I was concerned.

Q. You and your family had camped out in the woods before that time?

A. Well, not very much, no, not my family.

Q. However, in moving about from one place to another, you had camped before? A. Yes, sir.

Q. Now, you knew Albert Jemison, you say, up on the Bitterroot?

A. Yes, sir, he used to live in the Bitterroot where I live.

Q. Did you desire that counsel should understand that Albert Jemison had written to anybody in the Bitterroot country about this?

A. I don't know whether it was Albert or not, no; it was a letter that came from up in that country.

Q. You simply know that there was a letter came there? A. Yes, sir.

Q. You didn't see the letter?

A. I didn't see the letter, no, sir.

Q. So you are not able to tell us that Albert Jemison wrote that letter?

A. No, sir. It was a letter that came from that country.

Q. But anyway, you went and saw Mr. Albert Jemison when you went up into the Blackfoot country?

(Testimony of Herbert Eddy.)

A. Yes, sir. I heard that he was locating people.

Q. And were you yourself familiar with the section lines and corners in that vicinity, Mr. Eddy?

A. Not till I went there.

Q. Had your experience in the woods enabled you to trace lines and corners? A. Yes, sir.

Q. And what have you to say as to the survey marks in that vicinity upon the trees, etc., being or not being apparent at the time that you examined this land?

A. Why, they was so they could be followed.

Q. And state whether your experience prior to that time had enabled you to follow the lines or corner markings upon the trees?

A. Well, I had done some of it.

Q. Now, what if any information did you have as to Albert Jemison's connection with the public surveys in that neighborhood?

A. Why, I heard that a year or two years before he was with the public survey.

Q. So that you understood that he was familiar with the lines of the public survey in that neighborhood?

A. He surely showed that he was from his proceedings.

Q. Now, you say that you were disappointed in the timber, Mr. Eddy? A. Yes, sir.

Q. What do you mean by that?

A. I meant that the timber in the company was not what I expected it was when I started; it was not as good.

(Testimony of Herbert Eddy.)

Q. And in referring to good, what do you mean, that it was deficient in quantity or quality?

A. Well, in quantity.

Q. Or in both?

A. In quantity especially. Of course, tamarack is not so valuable timber in quality.

Q. Now, you said something to the effect, that having seen the timber, you did not feel like raising the money on your stuff?

A. Well, no, I didn't. I thought that it was not worth while, and I thought there was not timber enough.

Q. What idea did you have in mind at the time you left home as to the method by which you would get the money with which to take the timber in case you found it satisfactory to yourself?

A. In case that everything was all right, I was calculating to raise money on my stuff to pay for the timber.

Q. But when you saw it, as I understood you, you concluded that you wouldn't take that risk?

A. Yes, sir.

Q. And then it was that Mr. Jemison told you that if you wanted to, you could borrow the money from Mr. Cobban? A. Yes, sir.

Q. And as I understand you, Mr. Jemison at the same time told you that after you made final proof, if you wanted to sell the land to Mr. Cobban, you could

(Testimony of Herbert Eddy.)

sell it to him for one hundred dollars over and above what you had put into it.

A. Yes; I could sell to who I was a mind to.

Q. But if you wanted to sell to Mr. Cobban, you could sell to him, if you cared to do so, for one hundred dollars over and above what you had put in.

Q. Now, I think you said that Mr. Catlin made out the papers for you?

A. I believe he did.

Q. Do you recollect that quite distinctly?

A. I think that he was the man.

Q. Where did you see Mr. Catlin?

A. At Missoula.

Q. And where was his office with reference to Mr. Cobban's office?

A. Well, I think they were together; in the same building, anyway.

Q. And now that the matter is brought to your attention, can you recall now what the occasion was of your going to Mr. Cobban's office at the time you went into Missoula before you made your filing?

A. I expect it was to make out the papers, the filings.

Q. Mr. Cobban was then running a land and real estate business in Missoula, was he not?

A. Yes, sir.

Q. And Mr. Catlin, in conjunction with him, was attending to making filings and proofs before the land

(Testimony of Herbert Eddy.)

office, was he not, now that your recollection is refreshed about the matter, Mr. Eddy?

A. Yes, sir.

Q. Now, I don't know as I understand you, whether you made arrangements with Mr. Cobban at the time you made your filing to get the money with which to prove up on the land or not?

A. I couldn't say.

Q. But, anyway, Mr. Albert Jemison had told you before that time that he knew you could get the money from Mr. Cobban when you wanted to prove up?

A. Yes, sir.

Q. And you say that when you did prove up, you got the money from Mr. Cobban? A. Yes, sir.

Q. He didn't make it to you as a gift, did he?

A. No, sir, I gave him my note for it.

Q. And the money was furnished for your wife's entry at the same time? A. Yes, sir.

Q. And what, if any, evidence of indebtedness did your wife execute at that time, or did they both go into one?

A. I forget; they might have both been into one for all I know.

Q. You made final proof, did you? A. Yes, sir.

Q. Now, you say that after the parties made their final proofs, some of them went to the office of the Blackfoot Milling Company? A. Yes, sir.

Q. And with what purpose did they go to the office of the Blackfoot Milling Company?

(Testimony of Herbert Eddy.)

A. To see if they could do any better than they could with Mr. Cobban.

Q. I wish you would state what information you had, prior to the time that you made the deed to Mr. Cobban, as to whether you could or could not do better to sell the land to someone else. I mean, Mr. Eddy, had you made any inquiries or had you got any information from anybody as to whether you could do better by selling, for instance, to the Blackfoot Milling Company or anybody else? A. No, sir.

Q. I say, had you got any information about the matter?

A. From the Blackfoot Milling Company?

Q. Or from anybody?

A. Well, I think I did from Mr. Cobban; I think he told me that I might do better.

Q. You say some of these people went there to talk to the officers of the Blackfoot Milling Company afterwards? A. Yes, sir.

Q. Did any of those people communicate to you the results of their investigation?

A. Yes, sir; they said they couldn't do any better there.

Q. And it was after you had obtained that information that you closed the matter up with Mr. Cobban?

A. Yes, sir.

Q. Now, do you remember, Mr. Eddy, about the receipt from the receiver of the land office, or as to

(Testimony of Herbert Eddy.)

whether it was delivered to you or delivered to Mr. Catlin? A. No, I don't remember.

Q. You can't say as to that? A. No, sir.

Q. Now, I wish you would tell how it came about that Mr. Kilburn put the names of these witnesses down on the slip of paper?

A. Well, I don't know, any more than that he was there and done it.

Q. The memorandum of the land and the names of the witnesses was being made out for each one of the party at that time, was it not? A. Yes, sir.

Q. And Mr. Kilburn evidently acted as the scribe; he wrote the things down?

A. Yes, sir, but how he came to, I don't know anything about.

Q. He happened to be there at that time?

A. Yes, sir.

Q. Now, as I understand you, the business that you transacted out in the woods there at that time was done with Mr. Jemison; he was the man that you got to show you the land? A. Yes, sir.

Q. Who paid Mr. Jemison for that work?

A. I paid him for locating me.

Q. For selecting out the land for you?

A. Yes, sir.

Q. What did you pay him?

A. I paid him ten dollars.

(Testimony of Herbert Eddy.)

Q. Where did you get that money; whose money was that? A. (No answer.)

Q. What I want to know is had that money been borrowed by you from anybody? A. Yes, sir.

Q. From whom did you borrow it?

A. From Mr. Cobban.

Q. And when was it that you borrowed that money from Mr. Cobban?

A. Well, when I went to look at the claim.

Q. Before you went to look at the claim?

A. Yes, sir.

Q. I understood you to say you had not seen Mr. Cobban? A. Before—

Q. Before you went to look at the claim?

A. (No answer.)

Q. You got that money from Mr. Cobban at the time you proved up on the claim, didn't you, Mr. Eddy?

Mr. MAYNARD.—Just let him answer. He said he borrowed the ten dollars from him before he went out to look at the claim at all.

A. I don't think I saw Mr. Cobban before I went up there. I think this ten dollars was to apply on the hundred dollars I got.

Q. Anyway, you got the money and paid it to Mr. Jemison?

A. Yes, sir. Mr. Jemison was paid when we made final proof.

Q. Exactly. Now, what promise did you ever make

(Testimony of Herbert Eddy.)

to anybody or what agreement did you ever make with anybody prior to the time that you made final proof on this land that you would convey this land to anyone?

A. No one.

Redirect Examination.

(By Mr. MAYNARD.)

Q. You mean to say, then, Mr. Eddy, that when you got this hundred dollars for your part in this deal, that Mr. Cobban deducted the ten dollars from it which was to go to Mr. Jemison?

A. No, I think that I had one hundred dollars clear, and that he was to pay this ten dollars to Jemison.

Q. So that you got one hundred dollars net?

A. Yes, sir.

Q. Now, Mr. Eddy, you came up from Victor with your wife yesterday, did you, Friday?

A. I left there day before yesterday.

Q. What time did you get here in town?

A. I got here yesterday, if the train was on time at 11:05—

Q. Yesterday morning?

A. Yes, sir—or 12:05, or something like that.

Q. And where did you go?

A. I went to the Cosmopolitan Hotel.

Q. With your wife? A. Yes, sir.

Q. What time in the day did Mr. Cobban see you at the hotel? A. He didn't see me at the hotel.

Q. Where did he see you?

(Testimony of Herbert Eddy.)

A. I went to his room.

Q. At the Helena Hotel? A. Yes, sir.

Q. How did you happen to go there?

A. A friend of mine was going there to see him, this Mr. Charley Jemison, and I went with him.

Q. You and Charles Jemison went to Mr. Cobban's room at the hotel? A. Yes, sir.

Q. How long were you there?

A. Possibly three minutes, maybe five; not over that I don't think.

Q. Did you see him again later in the day?

A. I did not.

Q. Not at all? A. No, sir.

Q. Did you see Mr. Bickford, this gentleman right here? A. I did not.

Q. Never have seen him?

A. Never met him before that I know of.

Q. You had no talk in regard to this testimony that you were to give here? A. No, sir.

Q. With Mr. Cobban in his room? A. No, sir.

Q. What did you go there to his room for?

A. Just merely because my friend went, this Charley Jemison.

Recross-examination.

(By Mr. WALSH.)

Q. You did also have a talk with me, Mr. Eddy, yesterday afternoon, did you not? A. Yes, sir.

(Testimony of Herbert Eddy.)

Q. I am your attorney, am I not, in the criminal proceedings against you and your wife, representing you in those proceedings? A. Yes, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Did you ever employ Mr. Walsh yourself?

A. Well, I put up some money.

Q. Let us know about it. Did you ever yourself employ Mr. Walsh?

A. I put up some money, I believe, to employ him; that is what I understood, that it was to employ him.

Q. How much did you put up?

A. I think it was ten dollars.

Q. Whom did you pay it to?

Mr. WALSH.—We object to that. We object to any inquiries about the relations between himself and his attorney.

Q. Have you had any talk with Mr. Walsh yourself about it? A. Not myself individually.

Q. Did you have a talk with Mr. Cobban in regard to it? A. Not individually.

Q. Not individually with Mr. Cobban? A. No.

Q. With whom, representing Mr. Cobban?

Mr. WALSH.—We object; the witness does not know that anybody was representing Mr. Cobban.

Q. Was it somebody that claimed to represent Mr. Cobban?

(Testimony of Herbert Eddy.)

Mr. WALSH.—We object to that as utterly immaterial.

A. Well, my father in law was down to Missoula, and he said that we had to put up ten dollars.

Q. And that Mr. Cobban would do the rest?

Mr. WALSH.—We object to anything that his father in law may have said.

A. I suppose so.

Q. That was what you understood?

A. Yes, sir.

Mr. WALSH.—One moment. We object to the question propounded to the witness on the ground that the same is leading, that it calls for hearsay pure and simple, and because it is immaterial, irrelevant and incompetent.

(By Mr. WALSH.)

Q. Your father in law didn't say anything to you to the effect that Mr. Cobban would do the rest, did he?

A. No, sir.

(By Mr. MAYNARD.)

Q. How did you understand it then?

A. I understood that we had to put up for the costs.

Q. Put up ten dollars, and how did you understand that Mr. Cobban was to pay the balance of the fees that were coming to your attorneys, if you were not told that?

(Testimony of Herbert Eddy.)

Mr. WALSH.—He has not said that he understood anything of the kind.

Mr. MAYNARD.—He did say so.

Mr. WALSH.—No, he did not.

A. Well, I didn't know but that with all of us, that would be enough.

Q. I want to know what the fact is?

A. Well, that is the fact, that the whole community, I supposed, was, as I understood it, to put up ten dollars.

Q. How much was Mr. Cobban to put up?

A. I don't know anything about Mr. Cobban.

Q. Did you understand that he was to put up all that was required after the amount of ten dollars?

A. I didn't understand nothing of the kind, no, sir.

(By Mr. WALSH.)

Q. You didn't say so, either, did you?

A. Why, here?

Q. Yes. A. Not that I know of.

HERBERT EDDY.

Subscribed and sworn to before me this 15th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

MARY EDDY, a witness for complainant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Eddy, you have sat in the room here and listened to your husband's testimony, have you not?

A. A part of it.

Q. How much of it?

A. Well, I couldn't tell; I don't know how long he was here before I came. I didn't come with him.

Q. How long have you been in the room?

A. Well, I couldn't tell you; about half an hour, I guess.

Q. What was your name before you were married?

A. My maiden name was Mary Van Blaricom.

Q. How long have you been married to Mr. Eddy?

A. Seven years next April.

Q. How old are you now?

A. I will be thirty next March.

Q. And during the past seven years you have been living with your husband? A. Yes, sir.

Q. What did you do previous to your marriage?

A. I kept house for my father.

Q. Where was that?

A. Well, in the Bitterroot valley part of the time and part of the time in eastern Montana.

Q. Previous to your marriage, Mrs. Eddy, did you have any money of your own? A. No, sir.

(Testimony of Mary Eddy.)

Q. And you have been spending your time taking care of your home since, I suppose? A. Yes, sir.

Q. How many children have you?

A. I have five.

Q. Do you remember the circumstance of a letter being received down in the Bitterroot valley in regard to a chance to take up these claims?

A. Yes, sir, I remember some of them; I don't know as I do quite all.

Q. Quite all what? A. The circumstances.

Q. Then what were those circumstances; tell it in your own way.

A. One of our neighbors received a letter that we could take up timber and stone claims up the Blackfoot.

Q. Do you know who it was that received that letter?

A. It was Mrs. Thomas Roll.

Q. Who was the letter from?

A. From her mother, Mrs. Jemison.

Q. And that was Albert Jemison's mother?

A. Yes, sir.

Q. So, on getting this news, you thought you would go up and take up a claim? A. Yes, sir.

Q. And you went with your husband?

A. Yes, sir.

Q. And how many were there in the party?

A. There were five.

Q. Who were they, please?

A. Mr. Yarger, my husband, and myself, Mr. Thomas Roll and Mrs. W. J. Eddy, my husband's brother's wife.

(Testimony of Mary Eddy.)

Q. Your husband said it took about four days to go up there? A. Yes, sir.

Q. And then where did you camp out?

A. Well, I couldn't tell you just where; we camped in the woods.

Q. How far was it from Clearwater?

A. I couldn't tell you.

Q. You had never been up there before?

A. No, sir.

Q. And have never been there since?

A. No, sir.

Q. How long were you camped out there, not counting the time in coming and going?

A. Well, I don't remember just the number of days; some over a week, I think.

Q. Do you remember the circumstance of some men going with you to point out to you the lines of the claim that had been selected for you?

A. I went with my husband and the rest of the party.

Q. Who seemed to have charge of the business up there?

A. I don't know; we were all together; I don't know as there was any particular one.

Q. Was Albert Jemison up there?

A. He was running the lines, yes, sir.

Q. Did he seem to be running the thing?

A. Just showing them the lines, as I understand it.

Q. And had you ever seen Mr. Kilburn before?

A. No, sir.

(Testimony of Mary Eddy.)

Q. You met him up there? A. Yes, sir.

Q. Just describe in your own way, please, just what they did when the lines were pointed out to you of your claim?

A. Why, I don't know of anything more than we went up there and see the lines and came away again.

Q. You had had no experience yourself in running lines? A. No, sir.

Q. And didn't know a thing about it, did you?

A. No, sir.

Q. How long did that take, would you say, about how long, as far as your own lines were concerned?

A. Well, the biggest part of a day, I think; I don't know just how much.

Q. In going to the place and coming back?

A. Yes, sir.

Q. How far was it from your camp?

A. Why, I couldn't tell you; I know it was up on a mountain.

Q. And what time did you start in the morning?

A. About seven o'clock, I think; I am not sure.

Q. And got back in the afternoon?

A. Yes, late in the afternoon.

Q. How many claims were selected during that day?

A. I couldn't tell you.

Q. A number of them? A. I only went to mine.

Q. But others in the party were located that day, too, were they not?

A. I don't know as they was that very day.

(Testimony of Mary Eddy.)

Q. What did you do during the day, didn't you fish?

A. No, sir.

Q. What did you do?

A. I stayed in camp and took care of my baby, only when I went up to my claim.

Q. And who ran the lines for you?

A. Mr. Jemison.

Q. And he gave you a paper with the description of them? A. No, sir, I had no paper at all.

Q. Did you at any time? A. No, sir.

Q. Did your husband have it?

A. If there was any made he had it.

Q. You didn't know much about that part of it, I suppose? A. No, sir.

Q. Who were the party that returned from the mountain down into the valley?

A. The same party that went up with us, and some more that came later, I believe.

Q. They joined you up in the mountains?

A. Yes, sir.

Q. How many were there?

A. Four, I believe.

Q. Four more. What were their names?

A. It was Mr. Jemison's brother and wife, Mr. Mize and Mrs. Mize.

Q. Did this additional four all go back again at the same time with you?

A. I don't remember whether they left camp at the same time we did or not.

(Testimony of Mary Eddy.)

Q. Were there others in camp than those you have named?

A. I believe Mr. Wheaton was along, James Wheaton.

Q. The man who was here? A. Yes, sir.

Q. Do you remember, Mrs. Eddy, whether you stopped with your husband at Missoula after you returned from the mountain? A. Yes sir.

Q. Did you go anywhere?

A. We went to the land office to file.

Q. At once on your return? A. Yes, sir.

Q. Did you go straight to the land office?

A. I don't remember whether we went right to the land office.

Q. Or whether you went to Mr. Cobban's office?

A. I believe we went to Mr. Cobban's office.

Q. Before you went to the land office, is that it?

A. I don't remember, I couldn't tell you.

Q. Have you a recollection as to whether you were in Mr. Cobban's office at all that day before you went to the land office, or after you went?

A. I don't remember of seeing Mr. Cobban that day.

Q. Or Mr. Catlin?

A. I believe we see Mr. Catlin.

Q. Where did you see him? A. In his office.

Q. Before you went to the land office?

A. I couldn't tell you whether it was before or after; I have forgotten.

Q. Do you remember how it was that you happened to go to Mr. Catlin's office?

(Testimony of Mary Eddy.)

A. Why, something connected with our filing and papers, I believe.

Q. Did you hear anything that was said there to Mr. Catlin? A. No, sir.

Q. Did you see any of these papers that had the marks of the land? A. No, sir.

Q. You didn't see any that day?

A. No, sir.

Q. Do you remember how long you were in Mr. Cobban and Mr. Catlin's office?

A. No, sir; not very long.

Q. But as to whether that was before or after you went to the land office you don't know?

A. No, sir, I have forgotten.

Q. And you don't know whether you saw Mr. Cobban or not?

A. I don't remember whether we did or not.

Q. Then did you go up to your home that night to Victor?

A. Well, not exactly; we started for home, but we didn't get there.

Q. And you remained at your home during the time that elapsed between the filing and the making of final proofs? A. Yes, sir.

Q. When you came back on the 27th of October to make your final proofs did you go with your husband to Mr. Cobban's office? A. Yes, sir.

Q. Before you went to the land office?

A. Yes, sir.

(Testimony of Mary Eddy.)

Q. Do you remember how much money was paid there at that time? A. I do not.

Q. You know that Mr. Cobban did pay your husband—

A. I know we borrowed some of him, but I don't remember just how much it was.

Q. It was enough to pay for the two descriptions of land, was it not?

A. And some over, too, yes, sir.

Q. How long a time were you in Mr. Cobban's office?

A. I couldn't tell you.

Q. Did anybody go with you to the land office besides your husband from the office?

A. Why, some of us that were in the party.

Q. Were they in Mr. Cobban's office at the same time?

A. Some of them were, I think.

Q. Who were there when you were there?

A. Mr. Yarger and my sister in law, Mrs Eddy, and I don't remember as there was anyone else.

Q. You made your final proofs, and on the same day you joined with your husband in selling your land to Mr. Cobban? A. Yes, sir.

Q. He says that he received one hundred dollars and you received one hundred dollars. Was that paid to you? A. Yes, sir.

Q. You got your hundred dollars for your description on that same day that you made your final proofs, and conveyed to him the same day? A. Yes, sir.

Q. That is what you left your home for, Mrs. Eddy, wasn't it, in the summer time that busy season of the

(Testimony of Mary Eddy.)

year, and went up into the mountains and did what you have now testified to, and went through this operation for the purpose of getting this hundred dollars, wasn't it?

Mr. WALSH.—Objected to as leading and as not calling for testimony concerning any fact from the witness.

A. For that purpose, and for a pleasure trip with the party; not exactly to get the hundred dollars, for we didn't know that we were going to get the hundred dollars when we went up there; we didn't know how much we would get.

Q. But you had been informed, your husband had told you and others had told you that you could get that much anyway from Mr. Cobban.

Mr. BICKFORD.—Objected to as leading.

A. I never heard of Mr. Cobban till after we came back; I never heard his name.

Q. Well, that there was a party who would give you a hundred dollars?

Mr. BICKFORD.—Objected to as leading.

Q. Isn't that so?

A. It takes more than a hundred dollars to prove up; we got more than that.

The EXAMINER.—Just answer the question.

Q. Answer the question, please. You got a hundred dollars—

The EXAMINER.—Read the question to her.

Q. (Question read.)

(Testimony of Mary Eddy.)

A. That we could get that much over and more than it took to prove up.

Q. Over and above the expenses?

A. Yes, sir.

Mr. MAYNARD.—It may be conceded, I suppose, that the description contained in the statement and in the proofs is the same description as claimed in the bill of complaint, and the one that she afterwards conveyed to Mr. Cobban?

Mr. WALSH.—Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mrs. Eddy, did you see this letter that you speak about?

A. Why, I didn't read it myself. I see the lady that was with her at the time she received it.

Q. When you told about what was the letter, you were simply telling— A. What she read to me.

Q. From the letter? A. Yes, sir.

Q. Now, that said that you could get timber claims up in the Blackfoot? A. Yes, sir.

Q. And do you remember anything being said about parties who were going there, to whom there might be an opportunity to sell the timber lands?

A. Yes, sir.

Q. What was the substance of that?

A. Well, I don't remember just the words, but there

(Testimony of Mary Eddy.)

was a party going in there that we could sell our timber to.

Q. Now in the matter of selecting claims for these various ones in the party, how was that done, Mrs. Eddy? Were they taken up to certain places and told, this is your claim, and this is your claim, or did each select his own claim?

A. My husband went and selected mine, and then he took me to it.

Q. What evidence of indebtedness did you give Mr. Cobban at the time you borrowed the money from him?

A. We signed our note.

Q. And when, if at all, did you take up the note?

A. At the time we proved up.

Q. When did you execute the note and get the money?

Mr. MAYNARD.—She testified that she got it in the morning.

The EXAMINER.—Well, he has a right to ask that.

Q. When was it that you got the money with reference to the time that you proved up?

A. I believe we borrowed it the day that we proved up.

Q. And that is the time that you executed the note?

A. Yes, sir.

Q. Now, in speaking about when the note was surrendered back to you and taken back, when was that?

A. After we made our final proof.

Q. And at the time you conveyed? A. Yes. sir.

(Testimony of Mary Eddy.)

Q. Now, Mrs. Eddy, I wish you would tell us whether you had any information, before you conveyed the land to Mr. Cobban, as to what you would or would not be able to get for it from anybody else, or as to whether you knew of anybody having made any inquiries as to whether they could sell to better advantage to somebody else.

A. Why, Mr. Yarger, a gentleman in our party, had made inquiries.

Q. As to what could be obtained for it?

A. Yes, sir.

Q. And state whether any information had been conveyed to you by him or by anybody concerning his investigations.

A. Yes, sir; he told my husband and myself that we could not do any better.

Q. Than sell to Mr. Cobban at the price he offered?

A. Yes, sir.

Q. Now, I want to know from you, Mrs. Eddy, whether you, at any time prior to the time that you made final proof, made any promise to or agreement with anybody that you would sell or convey the land to Mr. Cobban? A. No, sir.

Q. Or to anybody else? A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Did you see Mr. Cobban yesterday?

A. No, sir; I did not.

Q. Nor this morning?

(Testimony of Mary Eddy.)

A. No, sir; not until I came in this room.

Q. You had your consultation with your lawyer, Mr. Walsh, who just now examined you?

A. Yes, sir.

Q. Yesterday afternoon? A. Yes, sir.

Recross-examination.

(By Mr. WALSH.)

Q. You were indicted for perjury in making this entry that you speak about, were you not?

A. Yes, sir.

Q. You speak about this trip up to the Blackfoot country being something in the nature of a pleasure excursion as well? A. Yes, sir.

Q. And counsel seemed to think that that season of the year, August 19th or thereabouts, was an exceedingly busy season with you. What is the fact about that?

A. Well, it is very busy, but we prepared to go some time before,

Q. Your crops did not suffer particularly by reason of your absence, did they? A. No, sir.

Q. And I dare say this wasn't the first time that you had ever camped out?

A. Well, about the first time since I was a small child.

Q. But you had camped out before?

A. Yes, sir.

Q. This wasn't the first time? A. No, sir.

MARY EDDY.

Subscribed and sworn to before me this 16th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

ABRAHAM J. JEMISON, a witness for complainant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Jemison, you are a brother of Albert Jemison?

A. Yes, sir.

Q. That has already testified in this case. How old a man are you? A. Thirty-nine years old.

Q. Where do you live?

A. I live up on the Blackfoot.

Q. How far is that from Missoula?

A. Well, I couldn't just tell you. I live on what they call the Nine Mile Prairie. There is no road up there, only in the summer time, that is, to my place, only around by Clearwater, and that would be about forty-seven miles.

Q. Are you a married man? A. Yes, sir.

Q. How long have you been married?

A. Why, I was married in 1885.

Q. How many children have you? A. Five.

Q. Are you a farmer or rancher?

A. Well, I have a ranch up there, but my business is engineering, stationary engineering.

Q. At the mills?

(Testimony of Abraham J. Jemison.)

A. Well, wherever I can get work, wherever I can get a job.

Q. How much of a place have you?

A. I have a hundred and sixty acres.

Q. How did you take that up?

A. Homestead.

Q. Is it proved up? A. No, sir.

Q. What other real or personal property have you besides this homestead that you are now proving up?

A. Well, I have a team and wagon and harness, a span of colts, and seven head of the cattle kind.

Q. Where were you living in the summer of 1899, Mr. Jemison?

A. I believe I was living in the Bitterroot at that time.

Q. With your family? A. Yes, sir.

Q. Whereabouts?

A. Three and one-half miles southwest of Victor.

Q. What were you doing up there?

A. Well, I was working a sawmill at that time, running an engine.

Q. Whose sawmill was it?

A. Kern & Mittower's.

Q. How long had you been up there?

A. In the Bitterroot, since 1887.

Q. You were in the Bitterroot, you say, since 1887?

A. Yes, sir; I came to the Bitterroot in the fall of 1887.

Q. Where did you say this homestead piece was?

(Testimony of Abraham J. Jemison.)

A. On the Blackfoot.

Q. How far away from the Bitterroot?

A. Well, it is—

Q. Seventy or eighty miles, isn't it?

A. Yes, sir.

Q. So your homestead piece is about seventy or eighty miles from your Bitterroot home, is that it?

A. I said my home was on the Blackfoot.

Q. I thought you said that you had been in the Bitterroot since 1887, is that so?

A. Yes, sir; till I moved on the Blackfoot.

Q. When did you move to the Blackfoot?

A. Well, it was in 1900, I believe, the spring of 1900.

Q. So that before that time you was living in the Bitterroot, and it is only since 1900 that you have been living on this homestead piece? A. Yes, sir.

Q. So that you had not moved up and had not started to acquire a homestead—

A. Yes, sir; I had filed my homestead.

Q. But hadn't moved up there previous to your taking up this stone and timber claim?

A. No, sir.

Q. How far were you living from the Eddys, that have just testified here, at the time that you made this entry?

A. About two miles; between two and three miles.

Q. I inquire for information now. Did you go up there with them at the time? A. No, sir.

Q. Were you not one of the party?

(Testimony of Abraham J. Jemison.)

A. No, sir.

Q. Did you read this letter that your mother wrote down? A. I received the letter myself.

Q. Have you got that letter?

A. I don't know whether I have or not. I had no way to find out before I came over.

Q. Did you make a search for it?

A. No, sir. I have been over the mountains feeding my cattle this winter to the Meadows, and I was not living on my own place this winter, and my wife was in the Bitterroot, sending the children to school, and things were boxed up so that I knew there was no use in looking for it. I don't know whether I have it or not; I couldn't say that.

Q. What was the letter; what did your mother say to you? A. Well, I don't know as I can—

Q. Well, the substance of it, please, Mr. Jemison?

A. Something to the effect that they were taking up land there on the Blackfoot, and if we wanted to take up claims we had better go up; that there was talk of a mill going in there on the Blackfoot; a Wisconsin firm, I believe, was going to be put in. That was about all, I guess.

Q. Did she mention Albert's name in connection with it?

A. Well, I believe she did; I believe she said Albert had some claims picked out for us.

Q. The substance of it was, then, that she advised

(Testimony of Abraham J. Jemison.)

you to come up there and take up these claims that Albert had selected? A. Yes, sir.

Q. How many people, in your best judgment, Mr. Jemison, did you communicate this intelligence to?

A. Not very many.

Q. Why?

A. Well, she mentioned to keep it still, and we wanted to go up there and get our claims before they were all taken up.

Q. About how many of you went up with your party?

A. There was just four in our party.

Q. What were they?

A. My wife and I and my brother in law, James Mize, and his wife.

Q. Did you know of the fact of the Eddys going up there? A. Yes, sir.

Q. Did you go up before them or after?

A. They went before us.

Q. How many others went before you, those composing the party that the Eddys have spoken of?

A. Well, I don't know anything about that party; I see them up there, but I don't know how many there was going up.

Q. You saw them up there? A. Yes, sir.

Q. They were in camp up in the mountains when you got up there?

A. No, sir; they was at my mother's, I believe, at the time.

(Testimony of Abraham J. Jemison.)

Q. How many came up from the Bitterroot after you went with your party?

A. Well, I don't know; I couldn't tell just how many.

Q. To your knowledge, Mr. Jemison, how many men and women came up from the Bitterroot valley up into the mountains near the Blackfoot to take up these claims?

Mr. BICKFORD.—Objected to as irrelevant and immaterial, there being nothing in the pleadings to show that a Bitterrooter has not the same right to take up timber land as other people.

A. There must have been fifteen or twenty as near as I can tell; I couldn't tell the number.

Q. You have about fifteen or twenty in mind now, have you not?

A. I think that is all that I know of; there is probably more came.

Q. Albert said there were some fifteen relatives that took up these claims. Do you know them all?

A. I expect I know the relatives.

Q. How did you go up into the Blackfoot?

A. Well, I went with a wagon and team.

Q. Did you stop at Missoula? A. I did.

Q. Did you see there Mr. Cobban or Mr. Catlin at that time? A. No, sir.

Q. You went directly up into the mountains?

A. Yes, sir.

Q. And Albert was up there? A. Yes, sir.

Q. How long did you stay up there?

(Testimony of Abraham J. Jemison.)

A. Well, I was gone just two weeks from the time I left home till I got back.

Q. Your wife was with you all the time?

A. Yes, sir.

Q. What is her first name?

A. Her name is Zora.

Q. And while you were up there, you selected the east half of the northwest quarter and the east half of the southwest quarter of section eighteen, township fourteen north, range sixteen west?

A. I don't think that is the description; I understood it as in section ten.

Mr. BICKFORD.—That is not the way I have it.

The WITNESS. The quarters are all right; the quarters are described all right, but it is in section ten, I think.

Q. Perhaps it is ten. That is your signature, is it? (Showing witness paper.)

A. Yes, sir, that is my signature.

Whereupon a recess was taken until 2 P. M.

February 15th. 1902, 2 o'clock P. M.

Hearing resumed.

ABRAHAM J. JEMISON, a witness produced by the complainant, being first duly sworn testified as follows:

Direct Examination.

(By Mr. MAYNARD—Continued.)

Q. Who did you go with when you went to this land that you afterwards took up?

A. I have answered that question once.

By Mr. BICKFORD.—He said he went with James Mize and wife and his brother and wife.

Q. I don't mean that; I meant that you went up to the mountain when you went to make the location, when you went to make the location of the land. Who ran the lines for you?

A. My brother Albert.

Q. Do you remember who were in the party?

A. Yes, sir, I believe I do.

Q. Do you remember who ran the lines?

A. Yes, sir, I did.

Q. Who were they in the party?

A. My brother Albert, Mr. Kilburn and James Wheaton, I believe that was all.

Q. Your wife with you? A. No, sir.

Q. Were there other locations made on that day?

A. Yes, sir.

Q. How many?

A. Why, just one I think, I don't remember.

Q. How far was it from the place where you encamped? A. About a mile and a half.

(Testimony of Abraham J. Jemison.)

Q. And how long did you stay there?

A. I think we were two days there at that camp.

Q. Altogether? A. Yes, sir.

Q. How long were you on this particular description?

A. Couldn't say just how many hours, it was two or three hours that we were looking at the land.

Q. What did Albert do in the way of pointing out the boundaries?

A. He showed me where the lines ran and how it laid.

Q. Did he give you a paper—did he give you a description? A. No, sir, he did not.

Q. Did you ever receive any such paper?

A. No, sir.

Q. How did you know then what description to give the land office?

A. Why, my brother went down with us when we went to file I think.

Q. Who do you mean, Albert went with you?

A. Yes, sir.

Q. Did you go directly from the camp to the land office? A. No, sir.

Q. What did you say? A. No.

Q. Where did you go?

A. To Mr. Catlin's office.

Q. I mean when you went to Missoula?

A. Yes, sir. To Mr. Catlin's office.

Q. And you first went to Mr. Catlin's office?

(Testimony of Abraham J. Jemison.)

A. No, sir, we went from the tent to my mother and father's first.

Q. And you went from there to Missoula and when you arrived at Missoula you went to Mr. Catlin's office?

A. Well, I went to my father's place and stayed there over night.

Q. Who were in the party that went down to Missoula?

A. Well, the same party that went out with me.

Q. And how many were there? A. Four.

Q. And Albert went with you?

A. No, he went—I think he went ahead of us, he went down horseback.

Q. And you met him at Missoula?

A. Yes, sir.

Q. And he took you to Mr. Cobban's office?

A. Mr. Catlin.

Q. Mr. Catlin's office? A. Yes, sir.

Q. Had you ever been in Mr. Catlin's office before?

A. No, sir.

Q. What did you do there?

A. Had him make out our papers to file on the land.

Q. Who furnished you the witnesses?

A. I think Albert named the witnesses.

Q. Do you remember who they were?

A. I think Mr. Wheaton and Mr. Yarger.

Q. Mr. who?

A. Mr. Wheaton and Mr. Yarger, I think those were the two that were with us when I proved up.

(Testimony of Abraham J. Jemison.)

Q. Was your wife with you when you made your filing, did she file with you on her piece?

A. Yes, sir.

Q. And both came together to Missoula to make your final proof?

A. I was working in Missoula when I proved up, she came from Victor down to Missoula and met me there.

Q. On the same day? A. Yes, sir.

Q. Your final proof as appears from the paper which I now have in my hand being your testimony given before the register was made on the 6th day of November, 1899? A. Yes, sir.

Q. Is that you signature? (Counsel hands paper to witness and calls his attention to signature of Abraham J. Jemison.)

A. That is my signature, yes, sir.

Q. And your wife made her final proofs on that day, did she not? A. Yes, sir.

Q. And you both in one deed conveyed your two claims to Mr. Cobban? A. Yes, sir.

Q. On that same day? A. Yes, sir.

Q. You say that you were working in Missoula at this time?

A. At the time I made proof? Yes.

Q. Where?

A. I was working for the Missoula Mercantile Company firing their boilers under their building in the Hammond Block.

(Testimony of Abraham J. Jemison.)

Q. Do you remember how much money you paid into the land office?

A. I never paid any in, they paid all the money in.

Q. Who are they? A. Mr. Cobban.

Q. Did you receive any money from Mr. Cobban on that day? A. I did sir.

Q. How much did you receive from him?

A. One hundred and ten dollars.

Q. A hundred and ten dollars? A. Yes, sir.

Q. Whereabouts were you when that money was paid? A. At his office.

Q. Was your wife present with you?

A. Yes, sir.

Q. Do you know how much she received?

A. Yes, sir.

Q. How much did she receive? A. The same.

Q. The same amount? A. Yes, sir.

Q. One hundred and ten dollars? A. Yes, sir.

Q. So that was all the money that you handled in any way in this transaction, Mr. Jemison?

A. Yes, sir.

Q. Did Mr. Cobban go with you to the land office?

A. I think it was Mr. Catlin.

Q. At the time of the final payments?

A. Yes, sir.

Q. Did you receive any paper at all there of any kind? A. No, sir.

Q. Received no papers? A. No, sir.

Q. How long a time was it after Mr. Catlin went

(Testimony of Abraham J. Jemison.)

when you were paid this money that you went back to Mr. Cobban's office?

A. I couldn't just say, I was attending the fires and I probably put in a fire or two before I went, I had to look after the fires the same day I made the proof.

Q. Did your wife wait for you to go with you?

A. Yes, sir.

Q. Did anyone else go with you?

A. I couldn't say.

Q. Couldn't say? A. No, sir.

Q. Mr. Catlin, did he go back with you to the office?

A. No, sir, I think he went right back, and I went to attend to my fires.

Q. Were the deeds—was this deed that you executed in Mr. Cobban's office prepared when you were there, or was it already prepared?

A. No, sir, it was prepared while I was there.

Q. Prepared while you were there?

A. Yes, sir, it was prepared while I was there.

Q. Who prepared it?

A. I believe it was Mr. Cobban himself, I couldn't say.

Q. Was the money paid in check or in currency?

A. Check.

Q. Two separate checks? A. Yes, sir.

Q. Had you seen Albert after he came down with you to make your filing?

A. Had I seen him after that?

Q. Yes, between these two dates?

(Testimony of Abraham J. Jemison.)

A. Yes, sir.

Q. Whereabouts?

A. At the bank building and at the hotel, I stopped at the Rankin House.

Q. On the day that you made your final proofs?

A. Yes, sir.

Q. Was Albert there again?

A. Yes, sir, he was there on that day.

Q. What was he doing?

A. He came down as a witness with some of the parties.

Q. When did you first know Mr. Jemison, that this money was to be paid into the land office by Mr. Cobban?

By Mr. BICKFORD.—We object to that because he has not testified that Mr. Cobban has ever paid any money into the land office.

Q. Through Mr. Catlin?

By Mr. BICKFORD.—Our objection to that is that no statement has been made by the witness that the money was to be paid into the land office by Mr. Cobban through Mr. Catlin.

Q. Did you understand the question, Mr. Jemison?

A. Not thoroughly.

Q. How did you—when did you first know Mr. Jemison that this money was to be paid into the land office by Mr. Cobban through Mr. Catlin?

(Testimony of Abraham J. Jemison.)

A. I was getting the money through Mr. Cobban to prove up on.

Q. Well, you had to see him—you hadn't seen him at all in regard to it?

A. Mr. Cobban?

Q. Yes, sir? A. Yes, sir.

Q. Where? A. At his office.

Q. When?

A. Why, when I made my filing.

Q. At the time you made your filing?

A. Yes, sir.

Q. At the time that Albert was with you and the rest of the party?

A. I don't know whether Albert was with me that time or not.

Q. I understood you to say that Albert came down with you?

A. He came down horseback there either ahead of us or after.

Q. And then he showed you to the office?

A. Yes, sir.

Q. And had you ever been there before?

By Mr. WALSH.—We object to that for the reason that the witness has not testified to any such facts.

Q. Well, let me understand the fact, Mr. Jemison, did you have any conversation with Mr. Cobban at the time that you filed in regard to his giving you money?

A. Well, I don't know whether it was Mr. Cobban

(Testimony of Abraham J. Jemison.)

or Mr. Catlin, but it was understood that I was to get the money through these parties to pay up on my land.

Q. Yes, of course it was understood, but did you have a talk on that day with either Mr. Cobban or Mr. Catlin on that subject?

A. Well, we couldn't have an understanding unless we did have a talk.

Q. But did you have a talk? A. Yes, sir.

Q. Who did you have a talk with?

A. I think it was with Mr. Catlin.

Q. What did Mr. Catlin say?

A. He said he could give me the money.

Q. He said he—now go on and tell just exactly the conversation that you had with Mr. Catlin at that time and place?

A. Well, I couldn't just state word for word, but he said Mr. Cobban was in the real estate business and loaning money and that we could get the money through him.

Q. Who was present when that conversation took place? A. I couldn't tell you.

Q. Where were you? A. In Mr. Catlin's office.

Q. And you don't know—do you know what room you was in?

A. No, I couldn't tell just the room, it is on Higgins Avenue there.

Q. And who was present? A. I don't know.

Q. You don't know who was present?

(Testimony of Abraham J. Jemison.)

A. No, sir.

Q. Can you name one of them?

A. I expect my wife was there.

Q. But do you know whether she was or not?

A. I think she was.

Q. You swore that you went to that room at that time and place to see Mr. Catlin for the purpose of seeing whether you could get money from him to make payment on this filing?

By Mr. WALSH.—We object to that as being leading in the first place, and in the next place as an attempt on the part of the counsel for the government to cross-examine his own witness, and it is therefore manifestly an unfair way to examine a witness.

Q. Answer the question, Mr. Jemison.

A. Well, I don't exactly understand what you are trying to get at.

Q. You swore that you went to that room at that time and place to see Mr. Catlin for the purpose of seeing whether you could get money from him to make payment on this filing?

A. I was to get the money from Mr. Cobban or Mr. Catlin, I think it was Mr. Catlin, Mr. Cobban's attorney, or partner I believe, I don't know which it was.

Q. As a matter of fact you never did receive one cent from him, did you?

A. Got the one hundred and ten dollars.

(Testimony of Abraham J. Jemison.)

Q. Except that, I mean? A. No, sir.

Q. Previous to your executing and delivering the deed? A. No, sir.

Q. No. As a matter of fact, Albert, your brother, had told you just exactly what you was to do and what you was to get, had he not?

By Mr. WALSH.—We object to that as being leading in the first place, and in the second place as not asking the witness for any proof of any fact and as calling for a conclusion from the witness as to what Albert did say and it is therefore hearsay.

A. Albert hadn't told me any such thing.

Q. Did you have any conversation with him on that subject?

A. No, sir, not in regard to the money.

Q. No, not in regard to what you were to get for the land?

A. No, he wouldn't say anything, he said go on and take up the land.

Q. That was what he was in the habit of saying to all these entrymen so far as you know?

By Mr. BICKFORD.—We object to that for the reason that it is to establish a matter of no consequence, and the witness has not shown himself competent to testify to this matter, and on the further ground that it is irrelevant and immaterial.

A. I couldn't say because I never heard his talk to all the parties.

(Testimony of Abraham J. Jemison.)

Q. But he did tell you just, said just go on and take it up and say nothing?

By Mr. WALSH.—We object to that for the reason that it is entirely irrelevant and immaterial what he did say.

A. He told me that I could take it up and dispose of it if I wanted to.

Q. But you had got to say all the time that is all right, just go ahead and do it and you will get your money without saying anything about it. Wasn't that the substance of what Albert told you?

By Mr. WALSH.—Wait a moment. I am going to object to that and if this thing is persisted in I am going to instruct the witness not to answer the question at all, and I am going to bring the matter before the Court and take the action of the Court upon it and see if he will sustain this kind of an examination.

Q. Answer that, Mr. Jemison?

A. Whether he told me that or not?

Q. Yes, the substance of that?

A. No, he didn't say I had to keep still.

Q. Well, what did he say?

By Mr. WALSH.—Well, you are asking there if Albert did not tell you to keep on saying certain things.

A. No, sir.

Q. What did he say in regard to this matter?

By Mr. BICKFORD.—We object to that as being en-

(Testimony of Abraham J. Jemison.)

tirely irrelevant and immaterial and as calling for hearsay testimony.

A. I don't remember just what he did say, but he never said very much of anything.

Q. But he told you to go and take up the land?

A. I don't quite understand the question.

Q. But he told you to go and take up the land, did he not?

By Mr. WALSH.—We object to that for the reason that it is leading.

A. He told me if I wanted to take up a timber claim he would show me the land.

Q. Did he not tell you just what you could do with it? A. I don't think he did.

Q. When did you first find out that you could sell it to Mr. Cobban and get one hundred dollars?

A. Well, I heard, then I went up there; I heard that I could sell it to Mr. Cobban after I made final proof if I wanted to.

Q. Who did you hear it from, Mr. Jemison?

A. From parties that had been taking up land.

Q. Can you name them?

A. J. C. Gilman, my brother in law, and George P. Jemison, was one I believe, too.

Q. He told you that you could get one hundred dollars from Mr. Cobban, did he?

A. He said I could sell to Cobban.

(Testimony of Abraham J. Jemison.)

Q. And get how much for it?

A. I don't know whether he stated how much.

Q. When did you first find out you were to get this one hundred dollars that you swore you did receive?

A. I didn't find out until after I made my proof.

Q. Until you had made your final proofs, do you mean? A. Yes, sir.

Q. Did you find it out, in the land office or in Mr. Cobban's office? A. In Mr. Cobban's office.

Q. And that was on the same day?

A. After we had made final proof?

Q. Yes? A. Yes, sir.

Q. You found out in Cobban's office that you were to receive one hundred dollars?

A. That I could get one hundred dollars—a hundred and ten dollars.

Q. What is that?

A. That I could get a hundred and ten dollars if I wanted to sell it.

Q. What was the ten dollars for?

A. Just ten dollars I guess, that is a hundred and ten dollars.

Q. Well, what did the ten dollars stand for?

A. I don't know; that is all I could get out of it.

Q. That didn't cover any expenses?

A. No, sir, I paid my own expenses.

Q. What do you mean by that?

A. Well, my traveling expenses up there and back.

(Testimony of Abraham J. Jemison.)

Q. How much were your traveling expenses up there and back?

A. I don't know, I didn't keep any book account of it.

Q. Was it more than ten dollars?

A. I don't know just how much it was, I never kept any account of it.

Q. Well, what is your best judgment in regard to the amount of your expenses?

By Mr. BICKFORD.—We object to the judgment of the witness, he having already stated that he doesn't know.

Q. He has some recollection, I imagine.

By Mr. BICKFORD.—We object to that also as being immaterial and irrelevant.

Q. Was it about ten dollars your expenses up there and back?

By Mr. BICKFORD.—We object to that as leading, and upon the further ground that it is immaterial and irrelevant.

A. It was somewheres close to ten dollars probably, I don't know how much.

Q. So that your expenses that you paid out yourself was somewhat close to ten dollars? A. Yes, sir.

Q. And you received one hundred and ten dollars, and that would cover the hundred dollars for this land and the ten dollars expenses?

(Testimony of Abraham J. Jemison.)

By Mr. WALSH.—We object to that for the reason that it involves a mathematical calculation by the witness, and the witness is not called upon to make such calculation at this time, and for the further reason that it is leading, and upon the further ground that it calls for a conclusion of the witness and is not proper testimony.

Q. Now, do you swear, Mr. Jemison, that you did not know prior to your going to Mr. Cobban's office when you went there for the purpose of executing that deed jointly with your wife that you were to receive a hundred dollars and the ten dollars which was to cover your expenses?

By Mr. BICKFORD.—We object to that because it is an effort on the part of counsel for the Government to cross-examine his own witness and it is not proper for him to do so.

A. Only from hearsay.

Q. Who told you you were to receive this amount of money?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case.

A. These parties that was taking up these claims.

Q. When did they tell you?

A. When they came back from taking up their land.

Q. Before you went up? A. Yes.

Q. And after they told you that you went up and made a filing of your own? A. Yes, sir.

(Testimony of Abraham J. Jemison.)

Q. And you say then that you afterwards received from Mr. Cobban what they told you they were going—what they got?

By Mr. BICKFORD.—We object to the question because it is leading in the first place, and in the next place it is irrelevant and immaterial.

A. I received a hundred and ten dollars for my claim—only a hundred.

Q. Only a hundred?

A. Yes, sir, that is all.

Q. You got all that you expected, didn't you, from Mr. Cobban?

By Mr. BICKFORD.—We object to the question for the reason that it is leading and upon the further ground that it is irrelevant and immaterial and hearsay.

A. I don't know as I did, I was going to try to get all I could out of it.

Q. But, that is what you expected to get, I asked you?

A. Well, I didn't know positively whether I would get anything or not.

Q. But you went there for the purpose of executing and delivering the deed—were you going to give it to him? Were you to give him the land? A. No, sir.

Q. What did you say? A. No, sir.

Q. Were you willing to take whatever he saw fit to give you?

By Mr. WALSH.—We object to this line of testimony for the reason that it is not proper examination of the

(Testimony of Abraham J. Jemison.)

witness on the part of counsel it being in the nature of cross-examination of the counsel's own witness, and upon the further ground that it is leading.

A. No.

Q. But immediately after you executed and delivered the deed he gave you a check for a hundred and ten dollars, did he not?

By Mr. WALSH.—We object to the question for the reason that it is leading in the first place, and in the next place, we object to it because it is irrelevant and immaterial to the issues in this case, and further as being an attempt by counsel to cross-examine his own witness.

A. Yes, sir.

Q. You took it and went away? A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Jemison, do you desire to be understood that anybody told you that you were to receive a hundred dollars from Mr. Cobban?

A. That anybody told me?

Q. That you were going to receive a hundred dollars for this land?

A. Well, they didn't say that I would.

Q. Well, that was the question that was asked you, Mr. Jemison, counsel asked you if you knew before you went to Mr. Cobban's office how much you were to receive, and you said only by hearsay.

(Testimony of Abraham J. Jemison.)

A. Yes, sir.

Q. Now, I want to know from you if anybody ever told you you were to receive a hundred dollars from Mr. Cobban? A. No, sir.

Q. Or whether you meant to tell what those people had said they had received for their land from Mr. Cobban? A. I meant to tell what they had told me.

Q. They had told you what?

A. That I could get a hundred dollars.

Q. That if you sold to Cobban you could get a hundred dollars? A. Yes.

Q. Now did you have any agreement with anybody to sell to Cobban prior to the time that you made final proof? A. No, sir.

Q. Did you ever make any promise to anybody that you would? A. No, sir.

Q. Did anybody ask you to make any promise that you would? A. No, sir.

Q. When you left the Bitterroot country to go to the Blackfoot to take up this land, did you expect at that time that you were going to sell the land to Mr. Cobban?

A. I believe that I said that I understood that it was a Michigan firm that was coming in there and would buy the land.

Q. Your mother wrote that in substance in a letter, didn't she? A. Yes, sir.

Q. And had you any more intention of selling the and to Mr. Cobban at that time that you did to the Michigan man, or any other company? A. No, sir.

(Testimony of Abraham J. Jemison.)

Q. Now, Mr. Jemison, you were familiar with the city of Missoula while you were living up the Bitterroot valley were you not? A. Somewhat.

Q. That is the town in which the people of the Bitterroot valley trade extensively? A. Yes, sir.

Q. And you knew that Mr. Cobban was engaged there in the real estate business? A. Yes, sir.

Q. You know that he was engaged in the loan and real estate business in Missoula, didn't you?

A. Yes, I knew him when he was at Hamilton.

Q. What was he doing at Hamilton?

A. He was in the real estate business there.

Q. You knew he was engaged in buying and selling land and loaning money there? A. Yes, sir.

Q. And you knew he was engaged in buying timber land, didn't you? A. Yes, sir.

Q. I want to know from you if you didn't say that if you wanted to borrow money with which to make your proof of the timber claim that you could borrow it of Mr. Cobban? A. Yes, sir.

Q. And you did so, did you not? A. Yes, sir.

Q. Now, do you remember anything in that letter that was written up there by your mother that Albert had to select the claims for you?

A. I believe she stated that Albert had taken up claims for me and my wife.

Q. If you would come to take them up?

A. Yes, sir.

(Testimony of Abraham J. Jemison.)

Q. What attorney, if any, did you have representing you in the matter of your entry before the land office?

A. I saw Mr. Stiff in Missoula, and Marshall and Stiff and yourself, I believe, are my attorneys.

Q. No, no, I mean in the land office at the time of your making the entry? A. Only Mr. Catlin.

Q. What is that? A. Mr. Catlin.

Q. Speaking of Marshall, Stiff and myself?

A. That was after I was indicted, I think, if that is what you mean.

Q. We were representing you in the matter of the indictment against you? A. Yes, sir.

Q. You had been indicted in the matter of making this entry, had you not? A. Yes, sir.

Q. Your wife also? A. Yes, sir.

Q. Have you ever worked in the timber very much, Mr. Jemison? A. Not very much.

Q. Not familiar with that branch of the business?

A. No sir.

Q. Not so much so as Albert, I suppose?

A. No, sir.

Q. Well, do you know any reason why it was that Albert designated the witnesses that should appear upon your final proof?

A. Well, he knew the parties that was on the land, he had named the witnesses that had been on the land and had seen this land.

Q. Now, when was it that you had a talk with Mr.

(Testimony of Abraham J. Jemison.)

Catlin with reference to getting the money to make the final proof?

A. Well, I think I had a little talk with him when I made my filing.

Q. Well, what was the condition upon which you were to have the money, it wasn't going to be given to you, was it?

A. No, we would have to mortgage our land—the timber land.

Q. Well, was it to be given to you as a gift or as a loan? A. As a loan.

Q. And what, if anything, was said about mortgaging the land?

A. Well, it was understood that we would have to give a mortgage on the land to secure the money.

Q. The payment of it? A. Yes, sir.

Q. Now, is your recollection quite clear as to the time at which you made final proof in the land office at Missoula and as to what time of the day it was that you executed this deed?

A. I think it was on the 6th of November.

Q. Yes, but I ask you about the time of day you say you may have put in one or two fires intervening; do you remember correctly about the matter?

A. No, sir, I do not; I do not remember whether it was in the forenoon or the afternoon.

Q. You cannot say about that? A. No, sir.

Q. Well, now, Mr. Jemison, had you in the meantime gotten any information from any source as to whether

(Testimony of Abraham J. Jemison.)

you could dispose of this land more favorably than to sell it to Mr. Cobban for the matter of a hundred dollars, or a hundred and ten dollars over and above what it cost you to get it?

A. Why, my sister told me we couldn't do any better, that is all the information I had. She had seen the Blackfoot Milling Company.

Q. You understood she had made some inquiries?

A. Yes, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Jemison, when did you arrive in town in obedience to this subpoena? A. In Helena?

Q. Yes, sir?

A. According to my time, I think it was about two o'clock—2:05.

Q. Yesterday? A. Yes, sir.

Q. Or the day before? A. Yesterday.

Q. Came with your wife? A. Yes, sir.

Q. Who else was with you?

A. Mr. Herbert Eddy and his wife.

Q. Did you hear Mr. Eddy's testimony in regard to your going to the hotel and the room of Mr. Cobban?

By Mr. WALSH.—Mr. Eddy didn't testify that this man went to Mr. Cobban's room.

A. I heard him testify that he went with my brother.

Q. Oh, it was your brother? A. Yes, sir.

Q. Did you go? A. No, sir.

(Testimony of Abraham J. Jemison.)

Q. Did you ever go? A. No, sir.

Q. You haven't seen Mr. Cobban at all since you have been in town?

A. When I came in here about ten o'clock is the first time that I saw him.

Q. Have you had any talk with him before going on the stand? A. No, sir.

Q. Or with Mr. Bickford? A. No, sir.

Q. You testified that Mr. Walsh is one of your attorneys in the criminal matter in which you are defendant?

A. Yes, sir.

Q. When did you talk with him?

A. Yesterday.

Q. At his office? A. Yes, sir.

Q. How long were you with him there in the office?

A. Oh, probably ten or fifteen minutes.

Q. Who, also, was present with you?

A. My wife, Mrs. Herbert Eddy, Mr. Eddy, and my mother.

Q. All of you were present? A. Yes, sir.

Q. The subject matter of your testimony—what you were about to testify to was considered, was it not?

A. No, sir.

Q. Nothing said on that subject?

A. No, sir.

Q. Your testimony wasn't talked about?

A. Yes, well talked about—asked me how we came to take up this land—the price of it, that is all.

(Testimony of Abraham J. Jemison.)

Recross-examination.

(By Mr. WALSH.)

Q. That was the substance of the conversation, was it not, Mr. Jemison? A. Yes, sir.

Redirect Examination.

Q. The subject of a loan was talked about, was it not?

A. I don't know, I believe it was made mention of.

Recross-examination.

Q. You told about the loan practically as you have told on the stand here, did you not, Mr. Jemison, when you talked with me about it? A. Yes, sir.

Q. Did you get any suggestions from me as to what you should say on the witness stand, Mr. Jemison?

A. No, sir.

ABRAHAM J. JEMISON.

Subscribed and sworn to before me this 16th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

ZORA JEMISON, a witness produced by the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Jemison, you are the wife of the gentleman that has just left the stand?

(Testimony of Zora Jemison.)

A. I am hard of hearing; I cannot hear anything unless you are right by me.

Q. You are the wife of Mr. Jemison that was just on the stand, are you not? A. Yes, sir.

Q. How long have you been his wife?

A. Seventeen years.

Q. What was your name before you were married?

A. Berger.

Q. Zora Berger? A. Yes, sir.

Q. Where did you live? A. In Kansas.

Q. Were you living there when you married Mr. Jemison? A. Yes, sir.

Q. How old were you when you married Mr. Jemison?

A. Twenty-three.

Q. Did you have any money of your own when you married him? A. No, sir.

Q. How many children have you? A. Five.

Q. Have you spent the years of your married life in looking after your family? A. Yes, sir.

Q. You have had no business of your own in any way?

A. No, sir.

Q. Have you in any way received any money from any source since you were married? A. No, sir.

Q. Do you remember of the fact of your taking up your stone and timber claim? A. Yes, sir.

Q. Is that your signature? (Counsel hands witness paper, being the papers in connection with her entry under the Stone and Timber Act.) A. Yes, sir.

(Testimony of Zora Jemison.)

Q. Where were you living on the 23d day of August, 1899? A. At Victor in the Bitterroot valley.

Q. Do you remember the fact of going from Victor in the Bitterroot valley up into the mountains?

A. Yes, sir.

Q. What did you go there for?

A. Well, to look at this land.

Q. To look at this land, you say? A. Yes, sir.

Q. Who did you go with?

A. I went with my husband and Albert Jemison, the locator.

Q. He was the locator, was he? A. Yes, sir.

Q. Do I understand you that you went with Albert?

A. Yes, sir.

Q. Was he down at your home?

A. No, he wasn't with me at—

Q. You met him up in the mountains?

A. Yes, sir.

Q. Who went with you from your home besides your husband? A. Mr. and Mrs. Mize.

Q. Do you know for what purpose they went there?

A. Well, to look at land, too.

Q. And to take up claims? A. Yes, sir.

Q. How many, Mrs. Jemison, of your neighbors around Victor, to your knowledge, took up these claims?

A. I don't know.

Q. Were there a good many?

A. Quite a number, yes, sir.

Q. How long did you stay up in the mountains?

(Testimony of Zora Jemison.)

A. We was up there two days, I believe.

Q. And it took you how many days to go up there?

A. It took about half a day, I think, to go up.

Q. I mean from Victor?

A. Oh, up there, we were three days and a half on the road.

Q. Three days and a half on the road?

A. Yes, sir.

Q. And, I suppose, the same length of time to go back? A. Yes, sir.

Q. And you were up there two days?

A. Yes, sir.

Q. Were you one of the campers? A. Yes, sir.

Q. How many were there in this camp, Mrs. Jemison?

A. Six, besides myself and my husband.

Q. You say that your brother in law Albert was the locator? A. Yes, sir.

Q. Did he take you to the land that you took up?

A. Yes, sir.

Q. How far was this land from where you were in camp?

A. About three miles, I believe, they call it.

Q. Who went with you to this land, besides Albert?

A. My husband, and Mr. and Mrs. Mize.

Q. What did you do when you got there?

A. I just looked around.

Q. You just looked around? A. Yes, sir.

Q. Did you go in a wagon? A. No, sir.

Q. You walked?

(Testimony of Zora Jemison.)

A. No; walked part of the way, and went on horseback part of the way.

Q. Changed off?

A. Yes, sir; part of the way we couldn't get a horse.

Q. What do you mean by just—when you say, just looked around?

A. Well, I don't know; looked at the timber.

Q. How long were you there on this description?

A. Oh, I guess somewhere more than ten or fifteen minutes—just kind of walked across.

Q. Did Albert give you any paper?

A. No, not that I remember of.

Q. Did you see him have some papers there with descriptions on, and the witnesses?

A. No, I don't think I did.

Q. Were you ever there before, Mrs. Jemison?

A. No, sir.

Q. Have you ever been there since?

A. No, sir.

Q. Do you remember what you did, Mrs. Jemison, after you left the mountain, after you broke up camp, where did you go to?

A. Why, we went over to Mrs. Jemison's father and mother.

Q. Down to Mr. Jemison's father and mother?

A. Yes, and then down to Missoula.

Q. Down to Missoula from there? A. Yes, sir,

Q. Do you remember when you got to Missoula?

A. Yes.

(Testimony of Zora Jemison.)

Q. What did you do when you got there?

A. Went to a lawyer's office and had some papers made out.

Q. Went to a lawyer's office and had some papers made out, you say? A. Yes, sir.

Q. Do you remember what the papers were?

A. Yes; they were the filing papers.

Q. Did it look like this paper? (Counsel exhibits to witness papers in the matter of her entry under the Stone and Timber Act.)

A. Something like it.

Q. You recognize this as your own handwriting, do you not? A. Yes, sir.

Q. Do you know what the name of the lawyer was?

A. No, sir; I don't; I don't remember his name. My husband done the most of my business; all I done was to sign my name; I always depend on him to do everything; I never try to do any business myself at all.

Q. Did you hear any talk at that time when you were down there in regard to this land, or have any talk with anybody? A. No, sir.

Q. After you filed these papers, where did you go next? A. To the land office.

Q. Went to the land office? A. Yes, sir.

Q. And then you filed these papers, did you?

A. Yes, sir; and then we went home.

Q. And then you went home; you remember going down to make your final proofs also, do you not?

A. Yes, sir.

(Testimony of Zora Jemison.)

Q. That is your signature to the final proofs, isn't it? (Counsel exhibits papers as before, to the witness.)

A. Yes, sir.

Q. Do you remember being in the land office that day? A. Yes, sir.

Q. Do you remember of paying any—do you remember being in Mr. Cobban's office on that day?

A. Yes, sir.

Q. What did you do there in Mr. Cobban's office, Mrs. Jemison?

A. Didn't do anything, only sat there.

Q. Did you sign your name to any paper while you were there?

A. I don't remember whether I did or not.

Q. Do you remember whether you received any money from him or not? A. I did not.

Q. You didn't receive any money from Mrs. Cobban?

A. No, sir.

Q. Didn't receive any money from Mr. Cobban at any time?

By Mr. WALSH.—We object to the question for the reason that it is leading.

Q. Never received any money?

By Mr. WALSH.—We object to that also as being leading.

A. Yes, but I don't really know who it was that was there.

Q. Did you receive some money on that occasion?

(Testimony of Zora Jemison.)

By Mr. WALSH.—We object to that also as being leading.

A. Yes.

Q. But it was on the same day that you made your final proof, wasn't it?

By Mr. WALSH.—That is also objected to on the ground that it is leading.

A. Yes.

Q. How much money did you receive?

By Mr. WALSH.—We object to that also as being leading.

A. One hundred and ten dollars.

Q. Do you remember who was in the office when you received this hundred and ten dollars?

By Mr. WALSH.—We object to that also as being leading.

A. No, sir; I do not.

Q. Do you remember who was in the office there besides your husband?

By Mr. WALSH.—We object to that also for the reason that it is leading.

A. No, sir,

Q. Can you say as to whether or not there were any other persons there?

By Mr. WALSH.—We object to that question as being leading.

A. No, sir; I don't think that there was.

Q. Just your husband and yourself there?

(Testimony of Zora Jemison.)

By Mr. WALSH.—We object to the question as leading.

A. Well, there was another man there, but I couldn't tell what his name was.

Q. Was it this man there? (Counsel for the government points to R. M. Cobban, sitting at the table with his counsel.)

By Mr. WALSH.—We object to that as also being leading?

A. I couldn't tell whether it was or not. I wouldn't know him if I saw him again.

Q. You couldn't tell whether it was Mr. Cobban, the man I am pointing to or not?

By Mr. WALSH.—That is also objected to as leading.

A. I couldn't swear it was him or not; I have an awful poor memory.

Q. Did you understand that this—that you were—how many acres were you to get under this stone and timber claim?

By Mr. WALSH.—That is also objected to as being leading.

A. One hundred and sixty acres.

Q. And did you understand how much it was to be an acre?

By Mr. WALSH.—We object to that as leading.

A. No, sir.

Q. You don't know how much you were to be paid an acre, do you?

(Testimony of Zora Jemison.)

By Mr. WALSH.—That is also objected to as being leading.

A. No, sir, I do not.

Q. You knew that it would probably cost you something, didn't you?

By Mr. WALSH.—We object to the question as leading.

A. Yes, I knew it would cost something.

Q. Did you have any money to buy any land with?

By Mr. WALSH.—That question is objected to for the reason that it is leading, and for the further ground that it is irrelevant and immaterial whether she had any money or not.

A. No, sir, I did not.

Q. Where were you going to get the money?

By Mr. WALSH.—We object to that on the ground that it is irrelevant and immaterial where she was going to get the money.

A. I don't know, I don't know anything about that.

Q. Never knew anything about it? A. No.

Q. Did you know that you were to get some money?

By Mr. WALSH.—We object to that as leading and as irrelevant and immaterial.

A. No, I don't know as I did.

Q. Did anybody tell you when you filed on this land and proved up on it and deeded it you were to get some money?

(Testimony of Zora Jemison.)

By Mr. WALSH.—We object to that as being leading, and further that it is irrelevant and immaterial, and further that it is hearsay.

A. I don't know; I heard so much I don't know what they did tell me.

Q. You say that you didn't have any money to buy any land with, and you didn't know how it was going to be paid for?

By Mr. WALSH.—We object to that as leading, and further on the ground that it is irrelevant and immaterial.

A. No, sir.

Q. You didn't know what you were going to get for your land after you had made your deed?

A. No, sir.

Q. Did you state as to whether or not you were going to sell this land?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and leading.

A. Not at the time.

Q. Did you know that you were going to sell the land when you took it up?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and also that it is leading.

A. Not at the time.

Q. When did you first find that out?

(Testimony of Zora Jemison.)

By Mr. WALSH.—We object to that as irrelevant and immaterial, and also leading.

A. After we proved up.

Q. Who told you then?

By Mr. WALSH.—We object to that for the reason that it is hearsay and irrevelant and immaterial.

A. My husband.

Q. Your husband told you that after you proved up that you were going to sell the land?

By Mr. WALSH.—We object to that for the reason that it is hearsay.

A. Yes, sir.

Q. Did he tell you how much you were going to get for it?

By Mr. WALSH.—We object to that as irrelevant and immaterial and hearsay.

A. Yes, sir.

Q. And after he told you that after you proved up you were going to sell the land, you did go to an office yourself you say?

By Mr. WALSH.—We object to that as irrelevant and immaterial, and also leading.

A. Yes, sir.

Q. On that same day?

By Mr. WALSH.—We object to that as irrelevant and immaterial, and as being leading.

A. Yes, sir.

(Testimony of Zora Jemison.)

Q. When you went to the office to sell your land, you didn't know to what place you were going to go, did you?

By Mr. WALSH.—We object to that for the reason that it is leading, and on the further ground that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. Didn't know whether you were going to get ten dollars or a thousand dollars, or anything, for it?

By Mr. WALSH.—We object to that as being leading, and also as entirely irrelevant and immaterial to any issue in this case.

A. No, sir.

Q. Had you ever been told that you were to receive a hundred dollars for the land after you had proved up on it?

By Mr. WALSH.—Object to that as irrelevant and immaterial, and also as being leading.

A. I don't know, I don't remember.

Q. What is your answer to that?

A. I don't know.

Q. Haven't you got any answer to that?

A. No, ain't got no answer.

Q. I wish you would try and recollect, Mrs. Jemison, about that when this man, whoever it was, that gave you this hundred dollars, or a hundred and ten dollars, as to whether or not you expected to get just that amount.

(Testimony of Zora Jemison.)

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial to the issues in this case.

By Mr. BICKFORD.—She has already answered that question, if your Honor please, and we object to the further questioning of the witness upon a proposition that has once been answered.

By the EXAMINER, to the Witness.—You can answer that if you can, Mrs. Jemison.

By Mr. MAYNARD.—The Judge says you can answer it if you can, Mrs. Jemison. A. Eh?

Q. That is what you expected to get a hundred or a hundred and ten dollars?

By Mr. WALSH.—We object to that as irrelevant and immaterial and as being leading. A. Yes, sir.

Q. You say you expected to get that amount of money, who told you that, Mrs. Jemison?

A. My husband.

Q. Who told you that you were going to get that much money?

By Mr. WALSH.—We object to that as being leading.

A. My husband told me.

Q. Well, when did he tell you that?

A. Well, at the office.

Q. At what office?

A. At Mr. Cobban's office.

(Testimony of Zora Jemison.)

Q. And that was the first time that you know how much you were to get? A. Yes, sir.

Q. I asked you wasn't it talked about among your relatives and friends that you were making these claims?

By Mr. WALSH.—We object to that for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. I suppose there was talk about it, but I couldn't hear it; they could talk all day and I never could know a word that was said unless they came right up to me and told it to me; they don't talk that way, they just told me to go and take up your claim.

Q. Did they tell you how much you could get then for it? A. No, sir.

Q. You never heard that? A. No, sir.

Q. Didn't you understand what you were to get for your timber claims after you had proved up on it?

By Mr. WALSH.—We object to the question for the reason that it is incompetent, irrelevant and immaterial to the issues in this case, and on the further ground that it is leading.

A. No, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mrs. Jemison you are the wife of Abraham J. Jemison who has just left the stand? A. Yes, sir.

(Testimony of Zora Jemison.)

Q. You are very deaf, aren't you?

A. Yes, sir.

Q. You don't hear any ordinary conversation at all, do you? A. No, sir nothing at all.

Q. It is necessary for anybody to speak right close to your ear in order that you may hear what is said, isn't it? A. Yes, sir.

Q. How long have you been so afflicted, Mrs. Jemison? A. Oh, just over eleven years.

Q. I understand you to say that you entrusted this business to your husband to take care of?

A. Yes, sir.

Q. You understand what is told to you, don't you?

A. Yes, sir.

Q. Now, Mrs. Jemison, I wish you would tell us now whether at any time before you made final proof on this land you made any promise to anybody or agreement with anybody that you would sell or convey this land to them? A. No, sir, I never did.

That's all.

ZORA JEMISON.

Subscribed and sworn to before me this 16th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

JAMES W. WHEATON, a witness produced on behalf of the plaintiff, after being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Wheaton, what is your name?

A. James W. Wheaton.

Q. Where do you live, Mr. Wheaton?

A. At Victor, in the Bitterroot valley.

Q. How long have you lived there?

A. About thirteen years or a little over.

Q. You are an unmarried man, I believe?

A. An unmarried man?

Q. You are not married, are you?

A. No, sir, not at present.

Q. What is your business?

A. Carpenter and joiner.

Q. Carpenter and joiner? And carry on your business around Victor?

A. Wherever there is the most money in it, anywhere in the country, in and around Victor, or Corvallis, or wherever there is any money to be made.

Q. What property have you, Mr. Wheaton?

A. My hat and my clothes that I have on.

Q. Your hat and your clothes?

A. Yes, sir, and a chest of tools; that is all I claim at any time.

Q. Do you know Albert Jemison?

(Testimony of James W. Wheaton.)

A. Do I know him? I ought to. I trotted him on my knee before he could run around.

Q. What relation is he to you, if any?

A. None at all, sir.

Q. Were you living then up in the Blackfoot country?

A. Was I living when up in the Blackfoot valley?

A. No, he was not born in the Blackfoot.

Q. You said that—that you knew him?

A. Yes, sir.

Q. Was your wife any relation to the Jemisons?

A. No, sir, none at all.

Q. You say that you are the owner of a hat and suit of clothes and some tools. Did you have any more property at the time you took up this stone and timber claim?

A. I had one hundred and sixty acres more than I have now.

Q. That is, when you took it up? A. Yes, sir.

Q. Did you have any other property except the 160 acres that was embraced in the stone and timber claim?

A. No, sir.

Q. —That you afterwards conveyed to Mr. Cobban?

A. Did I say that, or did you?

Q. Did you as a matter of fact convey the land to Mr. Cobban, or did you not? A. Who said so?

Q. I asked you whether you did or did not?

A. Whether I did or did not.

(Testimony of James W. Wheaton.)

Q. Yes?

A. I think I did, yes; if my memory serves me right.

Q. There was no trouble about the question?

A. No, I think I did, I think that is all right.

Q. Just look at this timber and stone land statement and your signature, James W. Wheaton. Did you make that? Is that your signature?

A. That looks to me like my handwriting, yes, sir.

Q. And the date is the 19th of August, 1899?

A. Yes, sir, I think that is right.

Q. That is your signature, is it?

A. Yes, I wouldn't deny that handwriting.

Q. And the date of your testimony, the time that final proofs were made in this case was the 27th day of October. Do you recognize that as your signature to the testimony? Is it a little bit scraggley?

A. Well, I got that way, then I think it is mine.

Q. That is your name, but it isn't signed in the right place?

A. Yes, I think that is my handwriting, too.

Q. How is the other one?

A. I don't think that is. I think that one is there, though. That lower one I think is. I think that was my signature, in and by my own hand. I don't wish to be dishonest in this matter. I feel insulted to be brought over here in this way; an insult on my dignity as an American citizen.

(Testimony of James W. Wheaton.)

By the EXAMINER.—Well, answer the question.

(Witness continuing.)

A. I know I feel that way, but I can't help it.

Q. I just simply desire you knowledge on the subject, Mr. Wheaton, that is all. Do you remember the fact of your going from Victor up into the mountains to make this location?

A. Why, I would be awfully if I didn't remember. Yes, sir, I remember all about it.

Q. Who did you go with?

A. Who did I go with? Let me see if I can remember. I don't remember exactly all of the parties. I think I was locating with Mr. Abraham J. Jemison and his wife. The last time we were in camp with them we were over on Belmont Creek. At the time we went out looking for the land there was Thomas Roll, William Eddy's wife and Yarger, and I ain't sure whether Herb. Eddy's wife was along; that is, that time or not. I think not, though. Yes, I think she was. Herbert Eddy's wife was in camp and Albert Jemison and a man by the name of Kilbourn. I think that comprised the company that were out there. There may be some others—if there is it has escaped my memory.

Q. Had you ever been up in that country before?

A. Yes, sir.

Q. How long before?

A. I was up there—I was up there something like three years before for about two winters, and one or

(Testimony of James W. Wheaton.)

two summers; I won't say which, I traveled all over there.

Q. In your work as a carpenter? A. No, sir.

Q. What were you doing there, Mr. Wheaton?

A. I went up there in the first place with Mr. Jacob F. Jemison, and me and him went into partners together, rented a piece of land from Mr. Blanchard on section 20 in Nine Mile prairie and I helped him fence the whole thing in and we got some cattle to raise. I went on what they call Blanchard's Ranch, and we got some cattle and run them for the winter, and in the spring I saw there was nothing in it and so I sold out, or rather gave it away and went to work at my trade. I could see that I could make more in my own business than in that. I knew all the people around there in that part of the country, and knew I could get along all right; not every person, but nearly everybody.

Q. Now, the description of the land that was embraced in your entry was the southeast quarter of section four, township 14, range 16 west?

A. I guess that is right.

Q. Who took you to this location?

A. Mr. Albert Jemison.

Q. Who went with you besides?

A. I think that A. J. Jemison, Kilburn and Calvin Yarger, I think those were the ones.

Q. What did Mr. Jemison do, Mr. Wheaton?

A. Mr. Jemison had been on a survey there some two years before, and was well acquainted with all the

(Testimony of James W. Wheaton.)

lands there as I understood it, and I went and employed him myself and gave him $10.00 out of my own pocket to take the matter up there. And also to take me up there on this land and show it to me. I went to him because I knew he knew the lands and knew that country well. As I say, I knew him since he was a child and he was in this business and I just naturally went to him.

Q. Sure? A. Sure.

Q. And he looked at the location that you had there, did he not? A. Yes, sir.

Q. And located you on that piece of land as well as others?

A. Yes, sir, he located a whole lot, I don't know how many; I know he located me.

Q. And the location had already been made prior to your going up into the mountains? A. No, sir.

Q. Didn't he make this selection for you ?

A. No, sir, Mr. Kilbourn, as I said, was along with us—Mr. Kilbourn went along as I understood it as a cruiser to make an estimate on the value of the timber on the land.

Q. Mr. Kilbourn went along for the purpose of estimating the timber?

A. Mr. Jemison took us there and showed us the corners of the land and gave us the numbers of the lands and I got them from him and went down and made my filing. Mr. Kilbourn made an estimate of the

(Testimony of James W. Wheaton.)

value of the timber. That is what he was there for, I suppose.

Q. And Mr. Jamison gave you a slip of paper with the numbers on?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial, and not a proper way to examine the witness, it being an attempt on the part of the counsel to cross-examine his own witness.

A. No, sir, he did not.

Q. Well, what did he give you?

A. He gave me the numbers of the land, and I went myself to the corners and I took the numbers of them myself and put them in my book—took them right off the corner post on the land.

Q. As he gave them to you?

A. Well, they were there plain enough to be seen. They had only been put there two years.

Q. How many were there with you at this time?

A. Well, I have already told you that.

Q. How long were you there on this land?

A. Well, I think I was there about half or three-quarters of a day. I traveled over this land and looked it over from one corner to the other. I started away in the morning from the camp and didn't get back until three o'clock in the afternoon.

Q. Did the others go out at the same time to make their locations?

(Testimony of James W. Wheaton.)

A. *I think Abraham J. Jemison and Calvin Yarger* went, I am not sure.

Q. They did?

A. I think they did. Of course I was not along with them, I wasn't looking out for anybody but myself.

Q. And when you went down to Missoula where did you go first? A. Where did I go first?

A. Well, that is a pretty hard question for me to answer, I don't think I can tell you that.

Q. Don't you remember where you went to when you first got to Missoula?

A. When I get into Missoula I don't always know where I do go first because I know a whole lot of people in Missoula.

Q. Did you go to the land office soon after you got there?

A. I didn't go there at all—yes, I did, I went there and made my filing.

Q. When?

A. Well, I think four or five days after I was on the ground. I went right from there to Missoula and then I went to Wallace, Idaho.

Q. You went and made your filing when you were in Missoula. But I mean how long after you got to Missoula? A. Well, I don't know.

Q. You are not positive, are you, whether it was the same day?

A. Well, within two or three days after I was on the

(Testimony of James W. Wheaton.)

land. Probably *not over three days, three or four days,* I couldn't tell you as to that, not if I was to try it.

Q. Do you—did you know the names of the witnesses that you were to have before you went to make your final proofs? A. Yes, sir, I did.

Q. Who were they?

A. I don't think, but I don't know that I could recall them all now. I think Abraham J. Jemison's name is on my papers there. I took the names of two or three of the parties that were with me on the ground, but I went to look it over myself, but I couldn't for the life of me say who they were now because I don't have any reason to commit it to memory and that is the reason I don't know.

Q. Did you see Mr. Catlin or Mr. Cobban before you went to Missoula?

A. No, sir, I never passed a word with either of them.

Q. And nothing was said by you to either of them?

A. No, sir, not a word.

Q. After you made your filing and between that day and the day that you made your final proof, did you see either of those parties, either Mr. Catlin or Mr. Cobban. Now don't answer the question before you understand it. A. Well, I understand it.

Q. Well, did you see either of those parties between the times mentioned? A. No, sir, I did not.

Q. So that you had completed then your final proof

(Testimony of James W. Wheaton.)

in the case that I now have in my hand before you had seen Mr. Cobban or Mr. Catlin?

A. No, I didn't do that, I saw Mr.—I think Mr. Catlin, I don't remember—you ask me if I saw Mr. Catlin, didn't you?

Q. Yes, sir, when did you see Mr. Catlin?

A. I saw Mr. Catlin between the time I went and made a loan from him of money to pay for my land. That was between the time of my making my entry and the time of my making final proof, but I don't remember that I saw Mr. Cobban.

Q. Do you remember when this was?

A. I couldn't say as far as the date goes.

Q. It might have been—might it not?

A. I think it was the day before I made proof—the day before if I remember right.

Q. If you remember right you say you saw Mr. Catlin the first time when you went to make your entry, and that you saw Mr. Cobban the day before you made your final proofs?

A. Yes, sir, in regard to this matter, it was entirely connected with this matter.

Q. And that then would be—

A. I think that is right. I may be wrong, but I think not.

Q. That would be on the 26th day of October, and you are making your final proofs then? A. Yes, sir.

Q. And the payment that was made to you at that time was for your fees in the land office?

(Testimony of James W. Wheaton.)

A. Yes, sir.

Q. How much were you paid altogether, Mr. Wheaton?

A. If I remember right it was about $420.00.

Q. Had you seen anybody else?

A. No, sir, I hadn't seen anybody else. That is to talk to in any way about these lands. That is, in regard to this deal or dicker.

Q. So that you made no efforts towards getting your money? A. No, sir.

Q. Until about twenty-four hours before you went to pay it into the land office? A. That is right.

Q. Where did you see Mr. Catlin?

A. In the office there—I think it is what they call the—let me see what is the name of that block.

Q. The Higgins Block?

A. I think it is in the Higgins Block, yes, sir.

Q. And at this time and place you talked with him about getting the money?

A. Yes, sir. I went there with the express intention of getting the money.

Q. With the express intention of getting the money?

A. Yes, sir.

Q. Why did you have such express intention?

A. Well, from the fact that I understood he was in the loan business, doing that kind of business; that he was running a business of that kind and loaning money to parties to take up land, and that if they wished to he would loan them the money as I understand it, and I

(Testimony of James W. Wheaton.)

went there with the express intention of getting the money.

Q. You knew you could get it there?

A. Well, I understood I could—of course I didn't know I could.

Q. Who had told you, Mr. Wheaton, of the fact that you could get this money from Mr. Catlin?

A. I don't know that anybody told me individually.

Q. But universally you were told?

A. Universally, you might say, as I understand it; that is it exactly. They were in that business and doing that kind of business and I went there to get it.

Q. Did you understand and know that all of your friends that had gone up into the mountains with you to make these claims were to receive the money from Mr. Catlin?

By Mr. WALSH.—We object to that as being leading, and as a matter utterly incompetent as to what he understood about the matter. The only matter about which it would be competent for the witness to testify is any conversations that he had, and for the further reason that it calls for a conclusion or deduction from the witness.

By the EXAMINER.—You may answer the question, Mr. Wheaton.

A. No, sir, I had no understanding with any of them in regard to the matter.

Q. Well, you may have no understanding, but

(Testimony of James W. Wheaton.)

was it generally talked among them that they were to get money from Mr. Cobban?

By Mr. WALSH.—We object to the question for the reason that it is leading.

Q. You understand the question, Mr. Wheaton, you are an awfully smart man and you understand me at once.

By the EXAMINER.—Just put questions to the witness, Mr. Maynard.

Q. He understands the question well, and he might just as well answer it at first as at last.

A. I don't like to have you answer questions for me.

Q. No, but I wish you would answer the questions that I put to you.

A. I don't know anything about their talk or affairs among themselves.

Q. Will you swear that you didn't hear any such talk?

By Mr. WALSH.—We object to the question for the reason that it is leading, and for the further reason that it calls for hearsay testimony.

A. That is harder yet.

By the EXAMINER.—You can answer that question.

A. I will not swear that I never heard any such talk, but I will swear right here that if I did I couldn't say who said it.

(Testimony of James W. Wheaton.)

Q. The next day you made your final proofs on the land, which would be the 27th, after you saw Mr. Catlin.

By Mr. WALSH.—We object to the question upon the ground that it is leading and incompetent, irrelevant and immaterial.

A. I think so, I don't remember.

Q. Did you receive any money from him at all?

By Mr. WALSH.—We object to the question for the reason that it is leading and upon the further ground that it is irrelevant and immaterial to the issues in this case.

By the EXAMINER.—Answer the question.

A. Well, I would like to have him ask that question again.

Q. Did you receive any money from him at all?

A. Didn't I—

By the EXAMINER.—Let him try and answer the question.

A. I have already stated before when that question was asked that I went there to borrow the money.

Q. Did you get the money? A. I did.

Q. Did you get the money from Mr. Catlin?

A. I borrowed it from him.

Q. When did you get it?

A. The land office papers will show when I got it. I couldn't swear to it positively. But I think it was the day before I made proof, if my memory serves me right

(Testimony of James W. Wheaton.)

—the day before I made proof, or it may have possibly been on the morning of the same day. I won't say exactly as to that. I am not here for to do anything that I know is wrong. No, I don't propose to do that.

Q. Well, now, having refreshed your memory on the subject, what do you say, did you receive the money the afternoon before, or on the morning that you made the final proof? A. I couldn't say.

Q. You couldn't say?

A. No, sir, I couldn't say positively. I don't want to testify to anything that I am not positive about.

Q. But it was on one of these two days, wasn't it?

A. Yes, sir, one of those two days.

Q. Where did you receive this money?

A. In the office.

Q. In what office?

A. In Mr. Catlin's office in the Higgins Block.

Q. In what shape? A. What shape?

Q. What form, yes?

A. In bills, government bills. I could not say just what bank they were on, though.

Q. In currency?

A. In United States currency, yes, sir.

Q. You may state as to whether or not he went with you to the land office?

A. Well, sir, I couldn't say positively as to that either, whether he did or did not go with me to the land office. I am not positive on that point.

(Testimony of James W. Wheaton.)

Q. Are you able to say positively that he didn't go with you to the land office?

A. No, sir, I wouldn't say that.

Q. And you yourself paid this money into the land office for the payment of the entry fees for this land?

By Mr. WALSH.—We object to the question as leading.

A. No, sir, I wouldn't say that he didn't go there with me.

Q. Nor that he himself didn't pay the money over to the register of the land office.

(Same objection.)

A. Well, didn't I pay the money there myself?

Q. But you cannot say that he was not there with you when you paid the money?

A. I wouldn't say whether he was or not, there is no use in a man saying something he knows nothing about. He might have been there; I wouldn't say that he wasn't, and I wouldn't say that he was.

Q. A few days thereafter you got the receiver's final receipt, did you? A. Yes, sir.

Q. And after it was issued you conveyed this same land to Mr. Cobban.

By Mr. WALSH.—We object to the question as being leading.

A. Yes, sir.

Q. Whereabouts were you?

A. Right there in Missoula.

(Testimony of James W. Wheaton.)

Q. In whose office?

A. Well, I couldn't say now, as far as the conveying of that land was concerned, whether I deeded it in the land office or up in the other office in the Higgins Block, I wouldn't say which place. I couldn't say, and answer you honestly, and I don't want to answer you any other way.

Q. And when you executed and delivered the deed of this land to Mr. Cobban that you took up in this way how much money did you receive for it?

A. How much money did I receive for it?

Q. How much money did you receive for it, yes?

A. If my memory serves me right I got one hundred and ten dollars, something like that. From one hundred and ten to one hundred and twenty. I wouldn't say positively whether it was one hundred and ten or one hundred and twenty.

Q. In what shape was that in, currency or a check?

A. Two fifty dollar bills, I think it was, and then one ten. I think I got two fifties, and a ten.

Q. You think you got two fifty dollar bills and then you got a ten dollar bill. That, the ten dollars would be the amount that you paid Albert Jemison, as you claim, wouldn't it?

By Mr. BICKFORD.—We object to that as being leading, and as calling for a deduction from the testimony, and not as testimony of the facts.

A. Yes, I testified to that and there is no use going over it again.

(Testimony of James W. Wheaton.)

Cross-examination.

Q. Mr. Wheaton, do you recall any circumstance that inclined you to the belief that you executed this deed in the land office? A. In the land office?

Q. Yes.

A. Well, as I said, I couldn't remember positively whether I did there, or whether I did up to the other office, but I don't think I deeded it up in the land office. I think that I did my business—all of my business up in the Higgins Block, up in the other office.

Q. Now, you didn't have any talk with either Mr. Catlin or Mr. Cobban, as I understand you, about this land before you made the filing at all?

A. No, sir, not a word.

Q. Did you ever see Mr. Chauncey L. Griswold?

A. I saw him, yes, but he is a bigger stranger to me than you are today.

Q. You had no talk with him about this land before you made the entry?

A. Not a word, no, sir.

Q. I wish you would state whether in the course of any conversation you had with Albert Jemison about this land at any time prior to the time you made the filing, you made any promise or agreement to sell this land to anybody? A. No, sir, none at all.

Q. And whether you made any promise or agreement to Mr. Jemison or anybody else prior to the time you made final proof that you would convey the land to anybody after you had acquired title to it?

(Testimony of James W. Wheaton.)

A. No, sir, if my memory serves me right, I never talked to anybody on the subject at all.

Q. You did not?

A. No, sir; as a matter of fact I understood that I could dispose of the land if I wanted to after I became entitled to it, or I might keep it the same as any other man. I wouldn't want it if I couldn't. That is the long and the short of it. The land was not worth a nickel to me or to anybody else where it lay if I couldn't dispose of it.

Q. Were you pretty well acquainted in Missoula at that time? A. Yes, sir.

Q. You knew at that time that Mr. Cobban was engaged in the real estate and loan business, did you?

A. Yes, sir.

Q. I believe you said you understood that he was loaning money to people?

A. That is my understanding. That is the understanding that I had before I went to look at the land.

Q. You understood that Mr. Cobban was buying timber lands, you could sell it to him if you wanted to?

A. Yes, I could sell it if I wanted to. It wouldn't be worth a nickel to me if I couldn't.

Redirect Examination.

Q. You are indicted for perjury in this matter, aren't you? A. Yes, sir.

Q. And Mr. Walsh, who has just examined you in this matter, is one of your attorneys, isn't he?

(Testimony of James W. Wheaton.)

A. I think so.

Q. Do you know? A. Well, yes.

Q. When did you arrive in town?

A. I think I came here on the train the 13th.

Q. The 13th? A. Yes.

Q. Have you had any conversation with him since you have been here? A. Yes, sir.

Q. With Mr. Cobban too?

A. With Mr. Cobban? I talked with Mr. Cobban I guess about five minutes last evening.

Q. Why is it that you don't seem to know whether Mr. Walsh is an attorney for you in the criminal proceedings or not?

A. Mr. Walsh? I understood that it was Bickford. What is the other man's name in Missoula?

Q. Marshall and Stiff.

A. Marshall and Stiff was the parties that I was informed was our attorneys. Marshall and Stiff, that is right. Mr. Walsh is a perfect stranger to me.

Recross-examination.

Q. You mean, Mr. Wheaton, that you did not personally make a trip down here from the Bitterroot valley with the express purpose of hiring me as your attorney?

A. I don't think I did. As I said before, you are a perfect stranger to me. I wasn't aware that you were representing me at all.

Q. You understood that Marshall and Stiff were your attorneys? A. Yes, sir, Marshall and Stiff.

(Testimony of James W. Wheaton.)

Q. You don't know whether Marshall and Stiff made any arrangements with myself to join with them in your defense or not?

A. No, sir; if they did, they did it without my knowledge or consent.

By Mr. WALSH.—That is all, Mr. Wheaton.

By Mr. MAYNARD.—Nothing further, Mr. Wheaton.

JAMES W. WHEATON.

Subscribed and sworn to before me this seventeenth day of February, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

EVELINE JEMISON, a witness called by the complainant, after being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Jemison, your name is Eveline?

A. Yes, Eveline; that is the way I spell it. That is the way I write it—Eveline.

Q. How old a lady are you? A. Sixty-five.

Q. Sixty-five?

A. Yes, that is, last birthday I was 65. I made a mistake in my filing; I put it either one year too young or one year too old. I looked at it after I filed it and saw that I had made a mistake. I am 65, that is, last fall.

Q. You are the mother of Albert Jemison?

(Testimony of Eveline Jemison.)

A. Yes, sir.

Q. And eight other children? A. Yes.

Q. How many of your sons have testified in this case so far?

A. Let us see; there is Albert, A. J. and Charlie.

Q. Was it your husband that was here on the stand?

A. Jacob F. Jemison, that was my husband.

Q. He testified too, did he?

A. Yes, sir, he testified too.

Q. Where is your home, Mrs. Jemison?

A. On the Blackfoot. Well, on the Clearwater. We live on the Clearwater right now.

Q. How long have you lived up in the woods there?

A. It has been eight years since we moved there, but we went down to the Bitterroot and stayed there for a short time. We had a place down there and went down there and stayed and sold out and then came back.

Q. You had a little place down there, did you?

A. Yes, on the Bitterroot.

Q. What place have you got on the Clearwater?

A. Well, we have got a hotel there.

Q. Was it the hotel that Mr. Griswold formerly had?

A. No, it is just on the other side close to Griswold's. It is a two-story frame we built there.

Q. A two-story frame?

A. Yes, sir, a hotel for stoppers.

Q. And is there—what is there at the Clearwater, anything except your house?

(Testimony of Eveline Jemison.)

A. Oh, yes, Griswold's place is there, and I don't think anything else except our place.

Q. Nothing else? A. Nothing else.

Q. That is what is called Clearwater, is it?

A. Yes.

Q. That is, this hotel and the postoffice, and anything else? A. Yes, there are two saloons there.

Q. The hotel, two taverns and the postoffice. Have you got the postoffice there?

A. No, we have applied for it but we haven't got it yet. We live upon a school land tract. Plowed it up and are cultivating it.

Q. You are upon the school land, you say?

A. Yes, sir.

Q. That is the extent of your holdings?

A. Yes, eighty acres of land in the Bitterroot, too.

Q. Eighty acres in the Bitterroot? A. Yes, sir.

Q. You have done your share in bringing up nine sons —nine children.

A. Yes, I had the family of another man for three years. My youngest child was two years old then.

Q. Well, do you remember, Mrs. Jemison, of your son Albert being employed and busy in the spring and summer and fall of 1899 in locating claims under the Stone and Timber Act?

A. Well, all of our boys went out between the first and the fourth of July, and spent one day in the timber hunting the timber. They had been talking about it ever since we had been there; we live quite close to the timber.

(Testimony of Eveline Jemison.)

Q. You know Mr. J. Griswold very well, do you?

A. Well, I am not very well acquainted with him. We never associated with him. We never was very good friends.

Q. Do you know of the fact from what Albert told you that Albert had been employed by Mr. Griswold?

By Mr. BICKFORD.—We object to the question for the reason that it is leading and hearsay, and upon the further ground that it is incompetent, irrelevant and immaterial.

A. Never was that I know of.

Q. Never was? A. No, sir, not that I knew of.

Q. But he was locating claims?

By Mr. BICKFORD.—We object to the question for the reason that it is leading.

A. Oh, he was locating claims.

Q. And he located one for you, did he not?

By Mr. WALSH.—We object to the question upon the ground that it is leading, and incompetent, irrelevant and immaterial.

A. Yes, on his own hook. That is the way he commenced locating these claims for our own family.

Q. Who did you say he went with and took up these claims?

A. My husband took up his own claim, and we helped each other locate our claims. Nobody located us.

Q. It seems that on the 21st day of July you filed a statement in the land office at Missoula for the descrip-

(Testimony of Eveline Jemison.)

tion of land which reads, the west half of the northwest quarter, and the west half of the southwest quarter of section 34, T. 15, N. R. 16 west.

A. That is the one I filed on. I never filed—

By Mr. WALSH.—Don't undertake to answer the question, Mrs. Jemison, until the counsel asks you something.

Q. Do you remember being in the land office?

By Mr. BICKFORD.—We object to the question on the ground that it is leading.

A. Yes, I remember being in the land office.

Q. Have you any recollection of going out into the woods to see this location?

By Mr. BICKFORD.—We object to the question on the ground that it is leading.

A. I have.

Q. Who took you up there?

A. Well, my son in law and my daughter. They had been up there before. I had been up there before, too. They took me up there on my claim. They had been up there before, and I hadn't. We went and spent a day on the land. It was close to our house where we lived.

Q. Was Albert along?

A. No, he wasn't along, but he had been on the land before. All of our boys had looked the land up before.

Q. And who went with you down to Missoula?

A. Well, two of my daughters.

Q. What were their names?

(Testimony of Eveline Jemison.)

A. Laura Roll and Anna Dildine, and Mrs. Yarger. My daughters live in Missoula.

Q. Was Mrs. Yarger any relation to you?

A. No, sir, she was a stranger.

Q. Your two daughters, Mrs. Yarger and yourself?

A. Yes, I think that is all. It seems to me there was five but I can't remember the other one. I can only remember just those four.

Q. And then you made your final proofs later on?

By Mr. WALSH.—We object to the question upon the ground that it is leading.

A. Yes, sir.

Q. And the date thereof was the 7th day of October, 1899?

By Mr. WALSH.—We object to the question upon the ground that it is leading.

Q. Do you remember selling your land, Mrs. Jemison?

By Mr. WALSH.—We object to the question upon the ground that it is leading.

A. Yes, sir.

Q. On that same day?

By Mr. WALSH.—We object to that question also for the reason that it is leading.

A. I can't remember. I don't remember of ever signing a deed, but I suppose I did. My father was about to die at that time and I went away to see him. I was in a good deal of trouble. I don't remember to have signed a deed.

(Testimony of Eveline Jemison.)

Q. You don't remember of signing a deed, you say?

By Mr. WALSH.—We object to that question for the reason that it is leading.

A. No, I can't remember that.

Q. You can't remember that?

A. I cannot remember that I did. I would know my name if I could see it.

Q. Do you remember the fact of receiving any money for the deed? A. Yes, I remember that.

Q. How much did you receive yourself?

A. One hundred and twenty dollars, I think it was.

Q. $120.00? A. Yes, clear of all expenses.

Q. And that is what you got for your land?

By Mr. WALSH.—We object to that on the ground that it is leading and further that it is irrelevant and immaterial to the issues raised to the pleadings in this case.

A. Yes, $120.00.

Q. What expenses had you been to?

A. Well, Mr. Catlin done my business, I don't know exactly how much.

Q. Did he pay the money?

By Mr. WALSH.—We object to that also on the ground that it is leading, and upon the further ground that it is irrelevant and im material.

A. I don't remember about that, but I know all four of us carried the money down to the office ourselves and Mr. Catlin went with us—went with us to file on the land.

(Testimony of Eveline Jemison.)

Q. You four women? A. Yes, sir.

Q. When you filed on the land you all of you got yourmoney from Mr. Catlin and went with him to the land office?

By Mr. WALSH.—We object to that question on the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. I cannot remember whether he went with us or not. Yes, he went with us when we filed on the land. When we done our business in the land office he went with us.

Q. He went with you when you filed?

A. Yes, sir.

Q. He gave you the money to pay the fees in the land office?

By Mr. WALSH.—We object to that question on the ground that it is leading and upon the further, ground that it is irrelevant and immaterial.

A. I don't remember what it did cost us to file on the land.

Q. You didn't pay the money in yourselves?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Yes, we paid the money in ourselves.

Q. Who did you receive it from?

By Mr. WALSH.—We object to that question upon

(Testimony of Eveline Jemison.)

the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Well, my daughter was with me. She is the one that got the money for us.

Q. From whom did she get the money?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Well, we had the money ourselves. That is, my daughter did, the one that is in Missoula.

Q. I want to understand you now. Did Mr. Catlin go with you at the time you filed on the land—you four women?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Well, we made our papers out and it seemes to me he made them out right in the land office. It seems to me he made them out in the land office. Mr. Hershey was in there attending to some books at the time.

Q. And the same day you got the $120.00?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. No, I didn't get any money when we filed.

Q. I mean when you made your final proofs?

By Mr. BICKFORD.—You didn't ask her that, Mr.

(Testimony of Eveline Jemison.)

Maynard. That was not the question you asked her before.

By Mr. MAYNARD.—Well, I will make it clear.

Q. What I am talking about is when you were making your final proofs.

By Mr. BICKFORD.—Yes, but you were not asking that question before.

By Mr. MAYNARD.—Well, I will withdraw the question then for the time being.

Q. What I intended to ask whether at the time she made her final proofs with the three other women that were with her, they also made their final proofs.

Mr. WALSH.—We object to that as being leading.

A. Yes.

Q. And Mrs. Yarger, too?

By Mr. WALSH.—We object to that upon the ground the ground that it is leading.

A. Yes, sir.

Q. And on that came day you made your final proofs you received this $120.00, you say?

By Mr. WALSH.—We object to that upon the ground that it is leading and for the further reason that it is irrelevant and immaterial.

A. I don't know about that.

Q. You can't say whether you did or did not?

A. I cannot tell you that.

(Testimony of Eveline Jemison.)

Q. Did you go and get it at the time that you executed the deed?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. I cannot remember about that.

Q. Can't remember about that?

A. No, you see I was in a hurry to go to the Bitterroot; and I don't know whether I went to the Bitterroot and then got it as I came back or not.

Q. Can you say who you received it from, whether it was from Mr. Cobban or from Mr. Catlin?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. It wasn't Mr. Cobban, I hadn't seen him before. I had never seen him then.

Q. Well, was it Mr. Catlin?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Well, I cannot say. They were all strangers to me in the office. My daughter was acquainted. She done the business.

Q. What was her name?

A. Why, Dildine. I cannot remember the talk at all. I trusted to her. Of course she was acquainted with everybody and as I was saying I had never been

(Testimony of Eveline Jemison.)

in town to do any business with them before. They were all strangers to me. Mr. Cobban wasn't in town at all—wasn't there that day.

Q. So that it wasn't Mr. Cobban either if he wasn't there?

A. No, it wasn't him if he wasn't there. He wasn't in town. I remember hearing them talking and saying that he wasn't, and I didn't see him on that day.

Q. Do you know Mr. Catlin at all?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. I don't know whether I should know him or not. My daughter said it was Mr. Catlin.

Q. Well, was it the man that your daughter said was Mr. Catlin, that gave you this money?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. I cannot remember. There was two men in there.

Q. Was it one of the two men that was in Mr. Cobban's office?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. It was my daughter that got the money. She said she had some money in the bank, and if we

(Testimony of Eveline Jemison.)

couldn't sell the land, she would go and get her money to pay for the expenses.

Q. But you did sell it to Mr. Cobban, did you not?

By Mr. WALSH.—We object to that question upon the ground that it is leading, and upon the further ground that it is irrelevant and immaterial.

A. Yes, my daughter done all the business, with reference to it.

Cross-examination.

(By Mr. WALSH.)

Q. Mrs. Jemison, what was it you said about your having thought for some years prior to this time about taking up a stone and timber claim?

A. I always intended to take one up and to sell it to the Blackfoot Milling Company.

Q. No, I asked you—you said something about wanting to take up a claim and I wanted you to go on and tell what talk there was concerning it, or what you thought about it?

A. About taking up this timber claim?

Q. Yes. Just go on and tell about that.

A. Well, we had several talks about that, but we never could borrow the money. They had promised to let us have the money, but we couldn't get it. But the land lay there, and we kept still about it so that we could go on the land and take it up when we got the money. But we were all this time about it.

Q. Now, prior to the time that you filed on this land

(Testimony of Eveline Jemison.)

Mrs. Jemison, what promise or agreement did you make with anybody to the effect that you would convey the land?

A. We had no agreement; we had no agreement that we would sell the land, or that we were going to sell it to anybody after we would get it.

Q. That was your intention to sell it, was it not, to whoever you get the best bargain with?

A. Yes, didn't intend to sell it to anybody.

Q. Now, when you made your final proof upon the land, had you entered into any negotiations as to whether you could sell it to anybody else besides Mr. Cobban?

A. Well, we thought we could sell it to Mr. Hammond. But we couldn't see him. My daughter was looking around for him to sell it to him for a week or so, but she said we could do just as well to let Mr. Cobban have it. He said he couldn't furnish us the money. My daughter she had money in the bank, and we was going to have that. He said he had other purposes for his money and that we had better sell it to Mr. Cobban. They sent my certificate up to Victor.

Q. You got it while you were there, did you, at Victor?

A. Yes, the land office asked where they could send it and I told them to send it there when they paid the money.

Q. You paid the money yourself?

(Testimony of Eveline Jemison.)

A. All of us women had the money ourselves. Four hundred and ten and a half, or something like that. The man said he would give us ten days to fix it up. He said I will give you ten days, and then you will have to pay the money. Then we went and got the money and fetched it down to him.

Q. Now, you told about the boys starting out about the Fourth of July?

A. Yes, they went out about the Fourth of July, and I think a few days before that.

Q. What boys do you mean?

A. Albert. Well, there was Albert and Charley—no, Charley, he wasn't there. He was working as a hired man. He came pretty soon after. I can't remember all of them. Dan, he wasn't there, I don't think.

Q. You say that was about the Fourth of July?

A. That was just before the Fourth, and they were out on the land on the Fourth of July.

Q. Well, do you know whether Albert was working for Griswold at that time or not?

A. No, I don't think they were, because they were at outs with the boy—that is, they were at outs.

Q. That is as you understand the thing. This was before he went to work for Griswold? A. Yes.

Q. Now, you have how many children altogether, Mrs. Jemison?

A. Nine children living, five boys and four girls.

Q. At one time, you say, you had another family?

A. Yes, I was taking care of another family.

(Testimony of Eveline Jemison.)

Q. How is that?

A. Well, I took care of some orphan children.

Q. How many? A. Why, I had four.

Q. How long did you keep them, Mrs. Jemison?

A. I gave them up last February.

Q. Small children, were they? A. Yes, sir.

Q. How long had you had them?

A. Well, I kept them three years. But ever since they have been away they have come back again to visit with me.

Q. They were with you in the summer of 1899, were they? A. Yes, sir.

Q. And how old are you, Mrs. Jemison?

A. Sixty-five this fall.

Q. They have you indicted in this matter relative to this entry, have they?

A. Yes, but I have never worried about it. I don't worry about it.

Q. Now, Mrs. Jemison, something has been said here in the testimony about your having written a letter up to your friends in the Bitterroot? A. Yes.

Q. Do you remember writing that letter?

A. Yes.

Q. Well, touching the matter of taking up these timber claims. I wish you would tell what there was in that letter, Mrs. Jemison?

A. Well, we heard that there was going to be a mill put up there in the Blackfoot, and the parties was go-

(Testimony of Eveline Jemison.)

ing to buy the timber, and they were going to take all the timber and we didn't think there was as much timber as there was. There was a lot of us, and our relations and we didn't think there would be enough to go around, and I wrote to them telling them that if they wanted to take up claims they should come up and take up a timber claim. I told them not to let anybody see the letter and not to say anything about it, because I didn't think there was land enough for all of them to take up a claim.

Q. And it was about this same timber that Albert went to look at?

A. Yes, sir. We just wanted this for our family and we just got timber claims around there for our family.

Q. The letter then was written before Albert went to work for Griswold? A. Yes, sir.

Q. And what is that you had heard about a mill going to be put in the Blackfoot?

A. Why, there was a man there from Wisconsin who said he was going to put up a mill, and buy all the timber. He was telling Jim Wheaton that, and he said that all the folks that had timber to sell, why that he would buy it and give them a good price. That he was coming back to put in the mill. That was three years ago or four. I think it was.

(Testimony of Eveline Jemison.)

Redirect Examination.

Q. Mrs. Jemison, when you did say that Albert went to work for Mr. Griswold?

A. Well, I don't know, I didn't know he was working for Griswold. I don't know anything about that at all. He wasn't working for Griswold when he took our land.

Q. You don't know as he did work for him at all?

A. Mr. Griswold was never at our house. I don't know about his making any contract to work for Griswold. We were never very good friends, and weren't when he commenced talking about taking timber land up—when Albert talked about taking timber land up. He couldn't be working for Griswold then because he and Griswold never talked together.

Q. Oh, I understood you to say that you didn't know anything about the time that Albert went to work for Mr. Griswold?

A. No, I don't know anything about it. He may have done it.

Q. Well, if you don't know anything about it, how are you to be able to swear to your lawyer here that you wrote this letter down to your relatives in the Bitterroot before he went to work?

A. Well, this was before Albert commenced, I told you. While he was working for us. I never heard of Cobban or anybody else then. This was before the fourth of July. He wasn't working for Griswold then

(Testimony of Eveline Jemison.)

because Griswold and him didn't talk together. He couldn't be working for Griswold then, and Jacob went to Griswold about it—about locating the land, but Albert and Griswold didn't talk together then, and I wanted to go myself and see Griswold. I wanted to see about taking up the land, and Jacob also went to see him and talked to him about taking up the land.

Q. Why did you want to go and see Griswold yourself about these locations?

A. Well, we heard something about it, and Albert, he asked about it too, and we asked him about it afterwards. I think that was about that time. I forget now just when it was, but about then he said to us, "If you want those claims you had better go and hunt them up." Yes, that was what he said to Jacob, too.

Q. You heard that yourself?

A. Oh, I forget whether I heard it or whether Albert told me. I know that Albert wasn't working for Griswold at that time. I didn't know Griswold was interested or had anything to do with it. Albert was away from home, and I didn't know exactly what he was doing. I think he was working for Mr. Kilburn. He was at our house to work, but about Mr. Griswold—I didn't know of him working for Mr. Griswold until afterwards when they were talking about this timber land, and then it seemed to me afterwards he went to work for Mr. Griswold.

(Testimony of Eveline Jemison.)

It is hereby stipulated and agreed by and between counsel that the testimony of Mrs. Eveline Jemison can be certified to by the Examiner as having been correctly transcribed with like effect as if she had signed it herself.

HENRY N. BLAKE,
Examiner in Chancery.

I do hereby certify that the foregoing testimony of Eveline Jemison has been correctly transcribed.

HENRY N. BLAKE,
Examiner.

At this point it was agreed between counsel for the respective parties that Charles Jemison might testify on behalf of the defendant at this time, he being here present, so as to avoid the necessity of bringing him before the Examiner to testify on behalf of the defendant.

CHARLES JEMISON, called by the defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Jemison, you know Chauncey L. Griswold, who testified in this case, do you not?

A. Yes, sir.

Q. I wish you would state whether you knew him; how long you have known him?

(Testimony of Charles Jemison.)

A. I have known him, I guess, for six or seven years—five or six years, something like that.

Q. Where did you know him?

A. Down at Clearwater in Missoula County, and in Missoula.

Q. Did you have a conversation with him about a year ago in Missoula concerning the matters under investigation in this case?

A. Yes, sir. I couldn't say exactly how long it was, but it was just before this trouble started with him and Mr. Cobban.

Q. And what have you to say as to whether his action against Mr. Cobban in Missoula County was then pending? A. Well, you mean his—

Q. No; was there a lawsuit on at that time?

A. I think it was just before the lawsuit started.

Q. Just before the lawsuit started?

A. Yes.

Q. Where did you meet him on that occasion?

A. I met him in front of the Rankin House and we went down the street and had a consultation together.

Q. I wish you would state whether or not in that conversation Mr. Griswold didn't say to you in substance or say to you that if Cobban didn't dig up, and pay him (Griswold) the demand Griswold was making of Cobban, that he would put him behind the bars, and whether he didn't also say to you in the same connection that if some of you fellows (who had made stone

(Testimony of Charles Jemison.)

and timber claims) didn't help him out that you would go behind the bars, too?

A. Yes, I heard him say he was going to see Mr. Cobban, and I just forget how the conversation came out, and he said if he didn't dig up I will put him behind the bars, and he says, you fellows are interested too, and if you don't dig up you are likely to go there yourself.

Q. Do you know what the reputation of Chauncey L. Griswold is in the neighborhood in which he lives for truth and veracity?

A. Well, most of the people around there—

Q. No, I just simply asked if you know, or if you have heard people talk about it?

A. Talk about it?

Q. Yes, talk about his reputation for truth and veracity? A. Oh, yes.

Q. Well, what is his reputation in the community in which he lives for truth and veracity, Mr. Jemison?

A. It isn't very good.

Cross-examination by complainant waived.

It is hereby stipulated and agreed by and between counsel for the respective parties that the testimony of Charles Jemison, taken on behalf of defendant, may be certified to by the Examiner as having been correctly transcribed, and be treated with the same effect as if it had been regularly read over and sworn to by the witness.

HENRY N. BLAKE,
Examiner in Chancery.

(Testimony of Charles Jemison.)

I do hereby certify that the foregoing testimony of Charles Jemison has been correctly transcribed.

HENRY N. BLAKE,
Examiner in Chancery.

It is hereby stipulated and agreed by and between the respective counsel for the above-named parties that the further hearing of this cause be and the same is hereby continued from this date until the third day of March, 1902, at ten o'clock A. M.

And further that the plaintiff may have until and including the fifteenth day of March, 1902, within which to complete the taking of its testimony in chief; and that the defendant herein may have the same time at the conclusion of the plaintiff's testimony in chief as aforesaid as he is entitled to under the stipulations heretofore entered into in this cause.

HENRY N. BLAKE,
Examiner in Chancery.

Dated this fifteenth day of February, A. D. 1902.

Monday morning, March 3, 1902, 10 o'clock.
Hearing resumed pursuant to adjournment.

Mrs. HARRIET F. BRYAN, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

(Testimony of Mrs. Harriet F. Bryan.)

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name?

A. Harriet Frances Bryan.

Q. Harriet Frances Bryan? A. Yes, sir.

Q. Are you a married woman? A. Yes, sir.

Q. What is your husband's name?

A. Thomas Bush Bryan.

Q. Thomas what? A. Thomas Bush Bryan.

Q. Is he the same Mr. Bryan that has been sworn as a witness in this case, Mrs. Bryan?

A. Yes, sir.

Q. Where are you living now?

A. In Missoula.

Q. How long have you been married, Mrs. Bryan?

A. We have been married twenty-five years last Christmas.

Q. Have you any children? A. Yes, sir.

Q. How many? A. Eight.

Q. Eight children? A. Yes, sir.

Q. What is Mr. Bryan doing now?

A. Well, he is working for the sawmill at present—that is the steam sawmill at the present time.

Q. At whose mill?

A. I don't know the man's name.

Q. What does he do?

A. Well, I don't know that either; he is just working for the steam sawmill, and that is all I can tell you.

Testimony of Mrs. Harriet F. Bryan.)

Q. As a day laborer?

A. Yes, sir, as a laborer. But he has only been to work for a few days. He doesn't intend to work for more than a few days. I don't know what he will do then. It is day labor though. I know that.

Q. Where did you move from when you moved to Missoula?

A. Why, we moved from Clearwater, on the Blackfoot.

Q. On the Blackfoot? A. Yes, sir.

Q. What did your husband do up there on the Blackfoot.

A. Well, he had a ranch up there. He worked a while on his ranch; and then he worked in a hotel. He was proprietor of the hotel up there for a little while.

Q. What is there at Clearwater, is there anything there except the hotel?

A. No, sir; there was a saloon up there; but then the saloon isn't open at the present time.

Q. Was the saloon in the hotel? A. No, sir.

Q. So that when you lived up on the Clearwater, there was just a small hotel there in the woods?

A. Yes, sir. Just a small hotel and a saloon. The post office was there at the time my husband was there.

By Mr. BICKFORD.—To make it perfectly clear where Clearwater is I will state that Clearwater is at the confluence of the Clearwater and the Blackfoot rivers. The Clearwater coming from the north and the Big Blackfoot from the east.

(Testimony of Mrs. Harriet F. Bryan.)

Q. Just the junction of those two rivers?

A. Yes, sir.

By the WITNESS.—The hotel is built right where the Clearwater empties into the Blackfoot river.

Q. And that is all there is. Where you speak of Clearwater then there is just simply this small hotel that was there at the time and the saloon?

A. Yes, sir, his ranch is up at the Clearwater about four miles above the hotel.

Q. Whose ranch is? A. Mr. Bryan's ranch.

Q. What ranch is that?

A. That is Mr. Bryan's ranch, the one he lives on.

Q. How do you hold it? A. As a homestead.

Q. How long did you live on it?

A. Lived on it pretty near three years.

Q. You haven't lived there then five years yet?

A. No, sir, we haven't lived there five years yet—the five years isn't up yet. We had just taken it up as a homestead.

Q. You have it simply then as a homestead claim?

A. Yes, sir.

Q. And you haven't lived on it enough to prove up on it. You just live on it enough to hold it?

A. Yes, sir.

Q. And then your husband works as a laborer the rest of the year, does he? A. Yes, sir.

By Mr. WALSH.—If your Honor please, this is a client of mine in the criminal proceedings pending in the

(Testimony of Mrs. Harriet F. Bryan.)

District Court and I haven't had an opportunity to talk with her yet. I would like to have a consultation with her at this time.

By the EXAMINER.—Very well.

(The witness retires from the stand for the purpose of consultation with Mr. Walsh. After such consultation the witness returns to the stand and Mr. Walsh states that there is no objection to the witness testifying. Whereupon the examination of the witness was resumed.)

Q. You have since I asked you the last question had a conversation with Mr. Walsh, have you not, Mrs. Bryan? A. Yes, sir.

Q. Did you ever see him before? A. No, sir.

Q. You were indicted by the Grand Jury for perjury, were you not? A. Yes, sir.

By Mr. BICKFORD.—I beg your pardon, but I very much doubt whether the witness understands the term "subornation of perjury."

By the Examiner.—Well, she seems to understand it.

By Mr. BICKFORD.—My remark to the Court is for the purpose of correcting counsel as to her being indicted for subornation of perjury. I think that her indictment is for perjury and not for subornation of perjury.

By Mr. MAYNARD.—That is right. I am very much obliged to you, Mr. Bickford.

(Testimony of Mrs. Harriet F. Bryan.)

By Mr. MAYNARD.—You may leave out the word "subornation."

Q. Did you know before coming into this office that Mr. Walsh was your attorney, Mrs. Bryan?

A. Yes, sir.

Q. You knew that?

A. Well, just hearsay, of course I didn't know it then myself.

Q. Who did you hear it from, Mrs. Bryan?

A. I heard it from Mr. Bryan.

Q. Your husband told you that Mr. Walsh was your attorney?

A. Yes, sir, he told me that he was my attorney.

Q. Do you know how he happened to become your attorney? A. No, sir.

By Mr. MAYNARD.—We are somewhat embarrassed this morning, Brother Walsh, by reason of the fact that Mr. Hershey is not here, and the records are not here, and Mr. Bickford has just telegraphed to find out if Mr. Hershey is on the train. He wrote me in regard to whether or not he should be here, and I answered that I had got to have the records here, but that it seemed as if it was unnecessary for him to be here in person—that he might leave them with the Examiner or at the local land office here.

By Mr. BICKFORD.—I understand that the reason of his care concerning the records is that he has received orders from the Department of the Interior not to let the records go out of the office.

(Testimony of Mrs. Harriet F. Bryan.)

By Mr. MAYNARD.—They all have orders to that effect.

By the EXAMINER.—Yes, that is my understanding of it.

By Mr. MAYNARD.—I know that is the general rule, but it seems to be entirely unnecessary that he should be here at such expense with these papers simply. I asked him to telegraph to the Department to see if he couldn't send the papers here and have them put in charge of the Examiner or the local office. But I think we can get along to some extent without them. I can go on and examine the witnesses up to the point where we need the papers to refer to.

Q. You were living up in the Clearwater at this place that you have testified to, Mrs. Bryan, at the time you took up this timber claim?

A. No, sir, I was living in Missoula.

Q. Oh, you were living in Missoula, were you?

A. Yes, sir.

Q. Do you remember when it was that you took up this claim?

A. No, sir, I do not. I don't remember the exact time.

Q. Do you remember the year?

A. I don't know that I do that. I don't remember. If I was to state I don't know that I could state as to the exact time.

Q. Do you remember who took up the claims at the same time that you took up yours?

(Testimony of Mrs. Harriet F. Bryan.)

A. No, sir, I don't know that anyone did at the same time that I did.

Q. Do you know Lelia T. Bryan? A. Yes, sir.

Q. What relation is she to you, Mrs. Bryan?

A. Sister in law.

Q. Do you know Belle Bryan, also?

A. Yes, sir.

Q. What relation is she to you? A. Daughter.

Q. Your daughter? A. Yes, sir.

Q. How old is she?

A. She is twenty-four years old.

Q. Where does she live? A. At Clearwater.

Q. She married Mr. Gilles? A. Yes, sir.

Q. Well, do you know Edgar Lehman?

A. Yes, sir.

Q. State as to whether or not you went with them up into the woods, when you made your claim?

A. Whether I went with who, please.

Q. With Lelia T. Bryan and your daughter, Belle Bryan, and Edgar Lehman?

A. No, sir, I did not.

Q. Well, state just what the facts and circumstances were in taking up this claim. A. In what way?

Q. Well, just state in your own way. Who spoke to you about it, and what did you do?

A. How I taken it up?

Q. Yes.

A. Well, I went on the timber claim of Mr. Bryan.

Q. Well, who spoke to you first about it?

(Testimony of Mrs. Harriet F. Bryan.)

A. Who spoke to me first about it?

Q. Yes, who was the first to mention it to you?

A. Well, I spoke to my husband about taking up a timber claim quite a while before I did, and then he spoke to me before I taken it up, and he said, likely I could take it up if I cared to, and I did so.

Q. Who went with you?

A. Who went with me?

Q. Yes, from Missoula up into the woods?

A. Mrs. Bryan.

Q. Anybody else go with you? A. No, sir.

Q. Had you seen Mr. Cobban before you went up into the woods? A. No, sir.

Q. Never had seen him in your life?

A. Not to know him.

Q. Had you seen Mr. Griswold?

A. Yes, sir, I had seen Mr. Griswold.

Q. Where?

A. Oh, I had seen him. I couldn't tell you all the places I had seen him. I had seen him off and on may be two years before I took up my timber claim.

Q. You don't know where you had seen him?

A. Well, no; he lived at Clearwater at the time I lived at Clearwater; when we lived there he was at Clearwater.

Q. Had you taken your claim up at that time?

A. No, we hadn't taken up our claim at that time.

Q. What was Mr. Bryan doing at that time?

A. He was working for Mr. Griswold.

(Testimony of Mrs. Harriet F. Bryan.)

Q. What was he doing for Mr. Griswold?

A. Mr. Griswold kept a hotel then, and he worked for him.

Q. Was he working around the hotel?

A. Yes, sir.

Q. Do you remember just when it was that he was working there at the hotel for Mr. Griswold?

A. No, sir, I don't remember just when it was. It was before I had taken up my timber claim.

Q. How long before?

A. I couldn't tell you how long it was before.

Q. Well, about how long?

A. I don't remember.

Q. A month, do you think?

A. Well, may be it was longer than that. I couldn't say the exact time. I know he was working for him, but I don't remember just when it was.

Q. Well, it was that same spring and summer, wasn't it?

A. Well, I cannot say, because I don't know; I don't remember.

Q. Can't remember that?

A. No, sir, I can't. I don't remember it, anyway. I know he did work for Mr. Griswold, but I don't know how long it was before I took up my claim. I couldn't say because I don't remember.

Q. How far was your homestead claim from Mr. Griswold's hotel?

(Testimony of Mrs. Harriet F. Bryan.)

A. I don't remember how far it was. It was some two or three miles from our ranch.

Q. Well, that is what I asked you.

A. Well, that isn't the hotel. Our ranch isn't the hotel.

Q. I asked you how far the ranch was from the hotel.

A. Our ranch is maybe four miles—four or five miles from the hotel.

Q. Well, you saw Mr. Griswold at this time in regard to this—about your taking up this claim, did you not?

A. I saw Mr. Griswold at the time—before I had taken up my claim.

Q. Yes.

A. Not to speak to him about the claim though; not until I got him for my witness—that is, all that I spoke to him about.

Q. He never spoke to you about taking up a claim?

A. No, sir, he never spoke to me about taking up the claim.

Q. Who did? A. Mr. Bryan.

Q. Who else, if anybody? A. No one else.

Q. Did Mr. Jemison?

A. No, sir, I never spoke to Mr. Jemison at all about it.

Q. Had you seen Lelia T. Bryan in regard to the matter? A. No, sir.

Q. Never talked with her about it?

A. About taking up my claim?

(Testimony of Mrs. Harriet F. Bryan.)

Q. You had never talked about taking up the claim with her?

A. No, sir, not that I remember of. She had taken up a claim, I think, before I did if I am not mistaken.

Q. You are sure about that, are you?

A. I am not sure, but then I think she did. She taken up a claim the same time that my daughter did.

Q. That was Belle, was it? A. Yes, sir.

Q. And she took it up before you did?

A. I think she did; I am not sure about that.

Q. That is, you are not sure whether your daughter took up her claim before you did yours or not?

A. I think she did. I think she took up her claim the same time that we did—that Lelia did, my sister in law.

Q. And Lehman? A. Yes.

Q. Those three claims were taken up at the same time, were they? A. Yes, sir.

Q. But you didn't take up your claim with the other three, as I understand you. A. No, sir, I did not.

Q. Where did you make your proof on your claim?

A. I taken mine up at the Missoula office.

Q. Did you have anything to do yourself with this work of proving up this claim except going to the land office?

A. Except going to the land and seeing the land?

Q. Yes.

A. That was all that I done, was going and seeing the land and taking it up.

(Testimony of Mrs. Harriet F. Bryan.)

Q. And you say that nobody went with you to this land except your husband?

A. Nobody but my husband.

Q. How far was the land that you took up from your ranch?

A. From my ranch the land I taken up, to my best knowledge, was between two and three miles—something about that; I don't know exactly.

Q. How long were you on the land, Mrs. Bryan?

A. How long was I on the land?

Q. Yes.

A. I just went on the land and looked over the land.

Q. How long did that take?

A. Well, I don't know. We was gone maybe half a day.

Q. Had you ever been there before for the purpose of going over it?

A. No, sir, not for the purpose of going over it. I had been on the land several different times, but I had never been over it with the intention of taking it up.

Q. Have you ever seen it since? A. No, sir.

Q. Was it on the mountain?

A. No, sir, it wasn't exactly on the mountain. It was along by the side of the mountain like.

Q. Well, just describe it as well as you can. On the side of the mountain like—what do you mean?

A. Well, it is on the top of the mountain, but it was on the side of the mountain, too. It wasn't a great ways

(Testimony of Mrs. Harriet F. Bryan.)

from Blanchard's Creek, as they call it, but it wasn't on the top, it was on the side.

Q. It was on the mountain side? A. Yes, sir.

Q. Did you walk up this mountain side?

A. No, sir.

Q. What did you do, did you walk over there all right? A. I rode over there.

Q. Did you get off your horse?

A. I don't remember; I may have, and may not.

Q. Well, if you didn't get off your horse, you simply remained in the road and looked up the mountain side.

A. There wasn't any road much about it where the land lay—there wasn't any road only just the road that my husband had cut across one side to haul hay, and we went over a good deal of it away from the road, where we could see most of it.

Q. And you say that you and your husband were there alone?

A. Nobody else; that is, we were there alone.

Q. Well, now, just state, please, just what you and your husband did after you got onto this land?

A. After we got onto this land?

Q. Yes; was he on horseback, too?

A. Yes, sir.

Q. And you were on horseback, also?

A. Yes, sir.

Q. And both of you then went on horseback to this point. Then what did you do, Mrs. Bryan?

A. Well, we just looked over the land, and then I sat-

(Testimony of Mrs. Harriet F. Bryan.)

isfied myself that I would take the land up, and we went there for that purpose to look at the land and I decided to take it up.

Q. Did you know that you were going to this place; to this particular point, when you started from home?

A. That was our intention to go there.

Q. To this particular point? A. Yes, sir.

Q. Do you know who had located the lines and made out the locations before this?

A. No, sir, I don't know that.

Q. Were there any points there at all that you saw?

A. What do you mean by that?

Q. The points of the descriptions of this tract that you took up—the corners?

A. The corners? I don't remember that. I don't remember whether I seen the corners or not; likely I did. I suppose that I did. Mr. Bryan would generally show me such things, but I don't remember at the present time.

Q. Well, then you went home with your husband. Did you see anybody else that day on this journey?

A. Not that I remember of.

Q. You went to Missoula to file on your claim, did you? A. Yes, sir.

Q. Who went with you?

A. Who went with me to file on my claim, do you mean?

Q. Yes. A. The witnesses?

Q. No, who went with you the first time?

(Testimony of Mrs. Harriet F. Bryan.)

A. Mr. Griswold and Mr. Lehman.

Q. Went with you first—went down to Missoula with you? A. When I went to file on my claim?

Q. Yes. A. Yes, sir.

Q. Edgar Lehman and Mr. Griswold?

A. Yes, sir.

Q. When you went to Missoula?

A. Yes, sir, when we met I was in Missoula. I lived in Missoula at the time. They went with me to the office to file on my claim.

Q. Had you seen Mr. Griswold before he went to the office when you went to file on your claim?

A. Had I seen him before, do you mean?

Q. Yes, and after the time that you and your husband went to look at this land?

A. I think I had, but I don't remember—I think that I had.

Q. Do you remember of talking with him?

A. No, I don't remember talking with him about it, but I think that I seen him.

Q. But you don't remember of having any talk with him?

A. No, sir, I don't remember of having any talk with him; and I can't say for sure that I seen him before that.

Q. But you remember that he went with you to the land office?

A. I know that he went with me to the land office.

Q. How did he happen to go with you?

A. How did he happen to go with me?

(Testimony of Mrs. Harriet F. Bryan.)

Q. Yes.

A. My husband went part of the way and he seen Mr. Griswold. I stopped at a place and he seen Mr. Griswold and he went from there with Mr. Griswold and Mr. Lehman—Mr. Lehman was boarding at our place and he went on with me, Lehman and myself.

Q. What did Mr. Lehman go for?

A. Well, he just—I don't remember what he went for, but he went, that is all I know. I don't remember what he went for—whether I had him to go, or why, that he went. He was one of my witnesses.

Q. What did Mr. Griswold do when he went with you to the land office?

A. Well, I don't know that he done anything. He spoke to the man about me taking up this timber claim.

Q. Who did he speak to?

A. Spoke to the clerk, I suppose.

Q. Do you know who the clerk was?

A. No, sir, I do not.

Q. Don't know his name? A. No, sir.

Q. Had you ever been in the land office before?

A. No, sir, I never had.

Q. Nor since? A. No, sir, nor since I—

Q. Got through with this business?

A. No, sir, that is the last.

Q. Do you remember what Mr. Griswold said to this clerk?

A. No, sir, I don't remember. I didn't hear what he said, he talked with the clerk but I didn't hear what he

(Testimony of Mrs. Harriet F. Bryan.)

said. He said he would go around and see the clerk for me and told me to be seated, that the clerk was busy and when he got through he told me that he was ready. I don't remember whether Mr. Griswold had any more to say to him or not.

Q. At the office, as I understand you, Mr. Griswold and this man, Edgar Lehman, that was boarding with you, were the only ones that were present at the time?

A. I don't remember whether there was anyone else present or not.

Q. I mean in your party?

A. Yes, sir, I think that was all that was present. That is, to the best of my knowledge.

Q. How long were you in the office?

A. Not any longer than I could just file on my claim.

Q. Do you remember what you did there?

A. No, sir, I do not remember.

Q. Had you seen Mr. Cobban up to this time?

A. No, sir.

Q. Or Mr. Catlin?

A. No, sir, I had seen Mr. Catlin, though I wasn't acquainted with him.

Q. I mean to have any talk with him on this subject?

A. No, sir, I never spoke to Mr. Catlin on the subject.

Q. Did you know when you made this filing what you were to—what you would be obliged to do when you proved up? A. Did I know?

Q. Did you know—did you know at that time that it would take some money to make the payment on the land?

(Testimony of Mrs. Harriet F. Bryan.)

A. Yes, sir.

Q. When were you there the first time?

A. Yes, sir.

Q. Did you have it with you?

A. When I went the first time, do you mean?

Q. Yes.

A. No, sir, not when I went and filed on the claim I didn't.

Q. Did you have any money of your own at the time?

A. Yes, sir, I suppose I did.

Q. What did you say?

A. Yes, sir, I had money at the time.

Q. How much did you have?

A. Well, I couldn't tell you how much money I did have at the time that I filed on the land.

Q. Well, how did you expect to pay for this claim?

A. I expected for my husband to furnish me money.

Q. You were to get the money to pay for this claim from your husband? A. Yes, sir.

Q. Did he so tell you before you went there?

A. That he would furnish me the money?

Q. Yes. A. Yes, sir.

Q. Did he tell you from whom you were to get the money?

A. No, sir, not before I went there. He didn't tell me who he was to get the money from; not before I filed on the claim.

Q. And you didn't ask him?

(Testimony of Mrs. Harriet F. Bryan.)

A. No, sir, I don't know whether I did or not. I don't suppose I did.

Q. You knew at the time, Mrs. Bryan, did you not, that he didn't have any money to buy the land with?

A. That he didn't have any money to buy the land with?

Q. Yes.

A. Well, he didn't have any money on hand at the time to buy the land. He told me he didn't have any money of his own, but that he would borrow money to prove up on the claim.

Q. Who was he going to borrow it from?

A. Well, he said he would borrow it from Mr. Cobban if he could.

Q. How long did he tell you that before you made your first filing?

A. Before I made my first filing? I don't remember. I don't remember how long it was.

Q. Well, about how long?

A. I couldn't tell you how long.

Q. Was that the—you knew at the time your daughter was to receive money the same way, did you not?

By Mr. BICKFORD.—We object to that, if your Honor please, for the reason that it calls for a conclusion of the witness, and not for a statement of fact. And upon the further ground that it is irrelevant, immaterial and incompetent for any purpose whatever. And further that it is leading.

(Testimony of Mrs. Harriet F. Bryan.)

By Mr. WALSH.—Do you understand the question, Mrs. Bryan?

Q. That is, to pay for her claim, I mean?

By the WITNESS.—Should I answer the question?

By the EXAMINER.—Yes, you may answer the question.

(Witness hesitates.)

By Mr. WALSH.—You may answer.

A. Yes, to my understanding she was to receive the money in the same way.

Q. She was unmarried at the time?

A. Yes, sir, at the time she taken up the claim.

Q. Was she living with you? A. Yes, sir.

Q. How long after she took up the claim before she married Mr. Gillis? A. Mr. Gilles?

Q. Mr. Gilles, yes.

A. I think it was a month. I am not sure as to the exact time, though, but it was something near about a month. I know she got married before she proved up on her claim.

Q. So your daughter had been living with you all of her life previous to her marriage, had she not?

A. Yes, sir.

Q. Helping you manage and bring up your other seven children?

By Mr. BICKFORD.—We object to that as being leading and as being immaterial.

A. Yes, sir.

(Testimony of Mrs. Harriet F. Bryan.)

Q. And this Edgar Lehman you say he was boarding with you? A. Yes, sir.

Q. And did you understand that he was to receive the money from the same source?

By Mr. WALSH.—We object to the question upon the ground that her understanding concerning Mr. Lehman is a matter that is entirely irrelevant to the issues in this case, and further as calling for a conclusion of the witness and upon the further ground that it is leading.

A. No, I don't know how that he received his money. I couldn't say that because I don't know anything about him.

Q. So you had nothing to do with the making part of the business. You left that all to your husband?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. When you came to make your final proof do you remember who were with you at that time?

A. When I came to make my final proof?

Q. Yes.

A. Mr. Lehman and Mr. Griswold I think was all.

Q. You understand the two different times that you went to the land office, do you? A. Yes.

Q. And I ask now who were with you at the time you made your final proof? A. Yes, sir.

Q. And you say Mr. Lehman and Mr. Griswold were with you? A. Yes, sir.

Q. Anybody else?

(Testimony of Mrs. Harriet F. Bryan.)

A. No, sir, that was all; I think that was all that was in when I made my final proof, Mr. Lehman and Mr. Griswold.

Q. Had you seen Mr. Cobban at all in the meantime between making your filing and making your final proofs?

A. No, sir.

Q. Nor anybody representing him? A. No, sir.

Q. Did you see him on the day that you made your final proofs?

A. Did I see him on the day that I made my final proofs?

Q. Yes.

A. Not to know him personally I didn't, no, sir.

Q. When did you ever see him?

A. When did I ever see who?

Q. Mr. Cobban, and have any dealings with him in regard to this matter?

A. Before I taken up my claim.

Q. No, afterwards, after you got your final receipt?

A. I have seen Mr. Cobban several times but I never had any dealings with him.

Q. You did deed to him this land that you took up though, did you? A. Yes, sir.

Q. Whereabouts were you when you deeded the land to him? A. I was in his office.

Q. Who was with you? A. Mr. Bryan.

Q. Anybody else?

A. No, sir, nobody else that I remember of.

Q. How much money did he pay you?

(Testimony of Mrs. Harriet F. Bryan.)

A. Four hundred dollars, I think it was; I think it was four hundred.

Q. You didn't get the money, did you?

By Mr. BICKFORD.—Well, we object to this for the reason that it is leading; and further, that it is irrelevant and immaterial.

A. Yes, sir.

Q. Did you get the money yourself?

By Mr. BICKFORD.—Well, we object to this for the reason that it is leading; and further, that it is irrelevant and immaterial.

A. I got the money of Mr. Bryan.

Q. From Mr. Bryan? A. Yes, sir.

Q. And what did you do with it?

A. I paid for my claim.

Q. Paid that into the land office? A. Yes, sir.

Q. Where were you when you received this money from Mr. Bryan?

A. Where was I when I received the money from Mr. Bryan?

Q. Yes.

A. Well, I don't remember where I was. I was at home, though, I suppose. It has been so long and I never thought that there would be anything more of it. I don't remember where I was.

Q. When did you receive it from him?

A. The morning that I taken up my claim.

Q. You received the money on the same morning that you proved up on your claim?

(Testimony of Mrs. Harriet F. Bryan.)

A. The morning that I proved up on my claim I should have said.

Q. What was that?

A. The morning that I proved up on my claim.

Q. That is, made your final proof, you mean?

A. Yes, sir.

Q. Do you remember where you were when you made your final proof?

A. I was in the land office, I suppose.

Q. Do you remember who was present?

A. Mr. Griswold and Mr. Lehman were all that I remember.

Q. They were your witnesses? A. Yes, sir.

Q. You paid this four hundred dollars into the land office that you had received from Mr. Cobban that morning?

By Mr. BICKFORD.—We object to that for the reason that it is leading; and upon the further ground that it is irrelevant and immaterial.

A. Yes, sir.

Q. Now, did you mean to say, Mrs. Bryan, that you cannot remember who were with you; don't remember who were with you when Mr. Bryan paid you that money?

By Mr. WALSH.—We object to the question for the reason that it is leading and further upon the ground that it is irrelevant and immaterial to the issues in this case.

A. I don't think anybody else was present.

(Testimony of Mrs. Harriet F. Bryan.)

Q. Where were you when this money was paid to you by Mr. Bryan?

A. To my best knowledge I was at home.

Q. Well, are you able to say that you were at home at that time?

By COUNSEL for the Defendants.—We object to the counsel cross-examining his own witness, and we object further to this question as being leading, and also for the reason that the witness has answered the question several times.

A. To my best knowledge I was at home.

Q. You won't swear that you were at home?

A. No, I won't swear that I was at home. I don't remember, as I told you a while ago.

Q. An hour or two after you received that money from your husband you paid that money into the land office, did you?

By Mr. BICKFORD.—She has sworn to it already several times.

By Mr. MAYNARD.—She has not sworn to—

By Mr. BICKFORD.—She has testified, if your Honor please, that within an hour or two after she received the money from her husband she made final proof at the land office; and when counsel undertakes to inject a statement of that kind into the question he is presupposing a statement by the witness that has not been made by her.

Q. Now, answer the question, Mrs. Bryan.

(Testimony of Mrs. Harriet F. Bryan.)

A. It was during the morning that I got the money—as I said a while ago, I don't remember.

Q. You say that same morning that you paid the money into the land office you received it from your husband?

By Mr. WALSH.—Wait a moment, the witness has not testified that she received the money in the morning.

By Mr. MAYNARD.—Read that last question, Mr. Cooper, to the witness, and let her answer it.

Q. You say that same morning that you paid the money into the land office, you received it from your husband.

A. The same morning. To my best knowledge it was that morning, but as I have stated before—I am satisfied it was paid me at home. As I said a while ago though, I don't remember. I know that my husband gave me money before I left home, but I don't remember exactly about that because he always keeps his money himself, and I am satisfied to my best knowledge. That is the question that I don't remember.

Q. Very well. The money that you received from Mr. Cobban you paid into the land office?

A. Yes, he furnished me the money and I paid it into the land office.

Q. And do you remember whether you got receiver's final receipt or not?

A. Final receipt for my money?

(Testimony of Mrs. Harriet F. Bryan.)

Q. Yes. A. Yes, sir.

Q. Did you receive it yourself? A. Yes, sir.

Q. And you yourself had not seen Mr. Cobban up to this time?

A. No, sir, I wasn't acquainted with Mr. Cobban.

Q. Nor Mr. Catlin?

A. No, sir. I wasn't acquainted with any one of them.

Q. Well, after you got your receiver's final receipt upon this entry of yours then you went to Mr. Cobban's office, did you? A. Yes, sir.

Q. How long after? A. How long after?

Q. Yes.

A. It was some time during the same week, I think, that I went. It wasn't the same day, I don't think; but it was during the week, the following week that we went to his office.

Q. Who went with you? A. Mr. Bryan.

Q. And then was the first time that you ever saw Mr. Cobban to know him, and to have any business with him? A. Yes, sir.

Q. Who else was present besides Mr. Cobban and Mr. Bryan, your husband and yourself?

A. That was all.

Q. And you conveyed this land to him, sold it to him? A. Yes, sir, I sold it to him.

Q. How long were you in his office?

A. I wasn't in there but a short time. Just long enough to do up our business.

(Testimony of Mrs. Harriet F. Bryan.)

Q. Just sign your name.

By Mr. WALSH.—We object to this as being leading, and further that it is irrelevant and immaterial to any of the issues in this case. There has been no testimony of that kind.

A. Yes, sir.

Q. Well, after you signed your name to this paper and gave it to him how much money did you receive from Mr. Cobban? A. After I signed my name?

Q. To this deed and delivered the deed to him? How much money did you receive from him then?

A. One hundred dollars.

Q. Then you went home? A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. You say you made your final proof, Mrs. Bryan, in the Missoula land office? A. Yes, sir.

Q. The usual officers of the land office were there at the time, were they?

A. Yes, sir, so far as I know.

Q. Are you personally acquainted with Mr. Hershey and Mr. Ranft?

A. No, sir, I never met them; not to know them.

Q. The usual questions that are asked witnesses on an occasion of that kind were asked you I suppose?

A. Yes, sir.

Q. And you signed your name to the paper and was sworn by them? A. Yes, sir.

(Testimony of Mrs. Harriet F. Bryan.)

Q. Your witnesses were also sworn at that time, were they? A. Yes, sir.

Q. And the final receipt that you received, what became of that; did you take it along with you?

A. The final receipt that I received?

Q. Yes, after you paid the money.

A. Yes, sir.

Q. You took that with you? A. Yes, sir.

Q. As I understand you, it was after that time that you in company with others went to Mr. Cobban's office?

A. Yes, sir, I had never met Mr. Cobban before.

Q. Had you ever talked with Mr. Griswold about this land, or the sale of the land prior to that time?

A. No, sir.

Q. Did you ever have, as a matter of fact, any conversation with anybody about selling it?

A. No, sir, none at all except my husband.

Q. Had you ever, prior to the final receipt that you received in the land office, bargained or agreed to sell the land to any person? A. No, sir.

Q. As a matter of fact, when you made this entry of land, you made this entry for your own benefit, did you not? A. Yes, sir, for my own benefit.

Q. Was there ever any talk before the time you made your final proof, or any agreement, by which you were to sell this land to anybody? A. No, sir.

Q. Did you ever authorize your husband to make

(Testimony of Mrs. Harriet F. Bryan.)

any bargain or agreement in your own name by which you would be bound to sell that land? A. No, sir.

Q. As a matter of fact, at the time you made your final proof, and received your final receipt from the register of the land office, that land was entirely and wholly yours? A. Yes, sir.

Q. Was there any conversation between your husband and yourself about the sale of this land before that time? A. No, sir, not particularly.

Q. Not particularly. You intended, as I understand you, to sell it to any person who would give you the amount of money you wanted for it?

A. Yes, sir, to anybody who would give me the most money for the land.

Q. You were willing to sell it to anybody who would give you the most money for it? A. Yes, sir.

Q. And you were at perfect liberty to sell it to any person who would give you the most money for it?

A. Yes, sir.

Q. Speaking about Mr. Lehman and Mr. Griswold going with you to Missoula, do you remember whether they went to Missoula with you once or twice?

A. To Missoula with me?

By Mr. MAYNARD.—She was in Missoula all the time.

By the WITNESS.—I was in Missoula at the time.

Q. I know, but at the land office.

A. Oh, I remember them going.

(Testimony of Mrs. Harriet F. Bryan.)

Q. Did they go with you to the land office twice?

A. Yes, sir, to prove up.

Q. To make final proof? A. Yes, sir.

Q. And to make original entry?

Q. Then they were with you on both occasions when you went to the land office, Mrs. Bryan?

A. Yes, sir.

HARRIET F. BRYAN.

Subscribed and sworn to before me this fourth day of March, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

STIPULATION.

By Mr. WALSH.—It is hereby agreed by and between counsel for the respective parties that the papers in the land office at Missoula in connection with the entries in this case, and in the possession of Mr. Hershey would show the final entry by this lady of her tract of land described in the bill of complaint as having been the entry concerning which she has testified.

HENRY N. BLAKE,
Examiner in Chancery.

CORA DODD, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your name, please? A. Cora Dodd.

Q. Cora Dodd? A. Yes, sir.

Q. Are you a married woman? A. Yes, sir.

Q. What is your husband's name?

A. Edward Dodd.

Q. Edward Dodd? A. Yes, sir.

Q. Where do you live?

A. Seven miles above Bonner, on the Blackfoot river.

Q. Seven miles above Bonner? A. Yes, sir.

Q. And on the Blackfoot river? A. Yes, sir.

Q. What does your husband do?

A. A laborer; he works.

Q. A day laborer? A. Yes, sir.

Q. Have you any homestead claim or any claim of any kind?

A. Well we have a claim there.

Q. What kind of claim?

A. Why it is taken up—

Q. What do you say, Mrs. Dodd?

A. He has got a claim there, I say.

Q. Got a claim where?

A. Up where we live, we live on it.

Q. You live on it now? A. Yes, sir.

(Testimony of Cora Dodd.)

Q. What kind of a claim is it?

A. Why, it is railroad land, I believe.

Q. What? A. On railroad land.

Q. How much of a place is it?

A. Oh, it is just a small place.

Q. How many acres in it? A. I don't know.

Q. Is your husband here to-day? A. Yes, sir.

Q. What does he do?

A. Why he—what does he do?

Q. What does he do now for a living?

A. Works.

Q. Working at what, by the day? A. Yes, sir.

Q. How long have you been married to him?

A. Ten years.

Q. Ten years.

A. Yes. Well, not quite ten years.

Q. How long have you lived where you are living now? A. Four years.

Q. Where did you live before that?

A. Why we lived up the Bitterroot a while; then we lived in Washington and Idaho.

Q. What is your husband's occupation—and what has been his occupation during that time?

A. Working by the day.

Q. Working by the day in the woods?

A. Yes, sir.

Q. Have you any children? A. Yes, sir.

Q. How many children have you? A. Three.

(Testimony of Cora Dodd.)

Q. Three children? A. Yes, sir.

Q. What was your name before you were married?

A. Watson.

Q. Cora Watson? A. Yes, sir.

Q. Quite a number of your own people took up claims under the stone and timber act, did they not?

A. Yes, sir.

Q. How many?

By Mr. WALSH.—We object to that as being irrelevant and immaterial. We object further upon the ground that it is incompetent and has no bearing upon the issues in this case.

Q. How many of your people have taken up these claims?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and irrelevant and immaterial to the issues in this case.

A. Father and mother.

Q. Your father and mother, anybody else?

A. My father and my mother, my brother and my sister in law.

Q. Your father and mother, and brother and sister in law?

A. Yes, sir.

Q. What are their names? A. Watson.

Q. What are their first names?

A. Well, my mother's name is Deadman.

Q. Your father's name?

(Testimony of Cora Dodd.)

A. Doc. Watson. My mother's name is Harriet.

Q. Doc. and Harriet Watson, and your brother?

A. Yes, sir, Marion.

Q. And your sister in law, and his wife?

A. Yes, sir.

Q. Is that all that you can remember? A. Yes.

Q. How many of your husband's people took up claims, Mrs Dodd?

By Mr. BICKFORD.—We object tothat for the same reason, that it is irrelevant and immaterial.

By the EXAMINER.—You can answer the question.

A. Five, I think.

Q. Five?

A. Five or six, I don't remember how many.

Q. Well, just give us the names, the first name as near as you can remember?

A. Well, Harrison, Allan, Winfield, Hiram, Mathilde and Lizzie.

Q. Well, what is the degree of relationship?

A. Why—

Q. Who is Harrison Dodd?

A. He is a brother of my husband.

Q. And who are the others?

A. They are brothers.

Q. All brothers? A. Yes, sir.

Q. And these women, are they all Watsons?

A. Yes, Mathilde is his mother. Hiram Dodd is his father, and Lizzie Dodd is Harrison Dodd's wife.

(Testimony of Cora Dodd.)

A. Yes, sir.

Q. Well, are you any relation, any kin to the Jemisons? A. No, sir.

Q. That is another tribe? A. Yes, sir.

Q. When was it that you first heard about this taking up of claims under the Stone and Timber Act, Mrs. Dodd? A. I think it was about two years ago.

Q. It was in 1899? A. Yes.

Q. The summer of 1899?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes.

Q. Where were you living at the time?

A. Above Bonner, at our place.

Q. Who first spoke to you about it, Mrs. Dodd?

A. My brother.

Q. What is his name? A. Marion Watson.

Q. How far was he living from your place?

A. I think they call it thirty-five miles.

Q. Where was he living?

A. Up above the Clearwater.

Q. Above the Clearwater did you say?

A. Yes, sir.

Q. Where was he when he spoke to you about this?

A. Where was he?

Q. Yes, where was Marion when he spoke to you about these claims?

A. He came down to our place.

(Testimony of Cora Dodd.)

Q. Who told you about these claims?

By Mr. WALSH.—We object to that as being leading, and further as being irrelevant and immaterial to the issues in this case.

A. He came down on his way to town from Missoula and stopped at our house and was speaking of it.

Q. What is that?

A. He was telling me about it as he stopped there at our place.

Q. What was that? What was it that he told you?

By Mr. BICKFORD.—We object that as being hearsay and irrelevant and immaterial.

A. Why, he spoke about that, said that we could take a timber claim up.

Q. How much did you get for it?

By Mr. BICKFORD.—We object to the question as being leading, and as assuming that he said in the first place that they could get something for it.

Q. Mrs. Dodd, how much were you to get for it?

Mr. BICKFORD.—We object to the question as being leading and assuming that he said in the first place that they could get anything for it.

By Mr. WALSH.—We also object further and insist that if counsel desires to get the conversation had between this witness and her brother upon the subject, and upon these matters, that he ought to ask her to state what conversation was had upon the matter and

(Testimony of Cora Dodd.)

what, if anything, was said, and not seek to put a construction upon it himself, and not form his questions in such a way as to put his own construction upon the conversation that was had between the parties referred to.

A. Why, it was understood that we were to get one hundred dollars.

Q. After you received this information from your brother, you proceeded to take up the claim?

By Mr. BICKFORD.—We object to the question as being leading, and irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. How long after?

A. How long after we took up our claims?

Q. How long after this conversation with Marion, your brother, before you took it up?

A. Well, I cannot remember how long it was. It wasn't a great while, though.

Q. Who went along with you, Mrs. Dodd?

A. My husband and father and brother.

Q. What brother? A. Marion.

Q. Well, he went with you? A. Yes, sir.

Q. And your husband and your father?

A. Yes, sir.

Q. Did Marion tell you who you were to receive the $100 from? A. No, sir.

Q. Where did you go, Mrs. Dodd, when you went with this party; where did you go?

A. We went on the land.

(Testimony of Cora Dodd.)

Q. How far from your home was the land?

A. Oh, it must have been thirty or thirty-five miles, I guess. I don't know just how many miles.

Q. Have you ever met Mr. Griswold?

A. No, sir.

Q. Or Albert Jemison?

A. No, sir. Well, I had met Mr. Jemison. I was acquainted with him.

Q. Neither of these men were with you at the time?

A. No, sir.

Q. Who was it that had charge of the party, Mrs. Dodd?

A. Why, my brother was working for Mr. Griswold, I believe.

Q. Your brother, Marion? A. Yes, sir.

Q. Who was he working for, Mr. Griswold?

A. Yes, sir.

Q. What was he doing for him?

A. Locating other timber lands for him.

Q. You left home with Marion as you have stated?

A. Yes, sir.

Q. Had you ever been up in this country before?

A. No, sir.

Q. Have you ever been there since?

A. No, sir.

Q. So this one time in you life is the only time that you went up there? A. Yes, sir.

Q. How long were you away from home?

A. Three days, I believe.

Q. How did you go?

(Testimony of Cora Dodd.)

A. With a wagon up to my brother's place and then walked.

Q. Up to Marion's place, do you mean?

A. Yes, sir.

Q. And you stopped there, did you?

A. Yes, sir.

Q. And then from his place you walked over to the land, did you? A. Yes, sir.

Q. Who were with you at the time that you walked over there? A. My husband and my brother.

Q. Your husband, yourself and Marion?

A. Yes, sir.

Q. Where was your mother?

A. She was at home.

Q. Didn't your father go with you. Didn't you say your father went? A. Yes, sir.

Q. He went too, did he? A. Yes, sir.

Q. So that it was your father, your husband and yourself that went where Marion took you?

A. Yes, sir.

Q. How far from the place that Marion took you from is his home, where you were stopping?

A. Oh, I don't know how far it is.

Q. Well, you have lived in the country all your life, and you know in a certain way. I am not asking you particularly, but I am asking you to give your best judgment on the subject, Mrs. Dodd, whether one or two or three or five miles?

By Judge BICKFORD.—We object as the witness has

(Testimony of Cora Dodd.)

already answered the question, and counsel now seeks to force an answer from the witness when she says she does not know.

Q. Well, she meant by that that she didn't know the number of rods it was. What I am asking particularly, Mrs. Dodd, is whether it was one or five miles.

By Mr. BICKFORD.—We object to counsel asking questions in this manner. The question has already been answered and counsel now seeks to obtain an answer from the witness when it appears from the testimony already given that she does not know the distance.

A. No, sir, I don't think it is over three miles.

Q. Three or four miles, or something of that kind, do you think?

By Mr. BICKFORD.—We object to the question for the reason that it is leading in the first place, and counsel is undertaking to get a statement from the witness as to the distance when she has already repeatedly stated that she does not know, and has given her best judgment upon the matter.

A. Yes, sir.

Q. And you walked from there, did you?

By Mr. WALSH.—We object to all these questions for the reason that they are leading.

A. Yes, sir.

Q. Did you walk back?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir.

(Testimony of Cora Dodd.)

Q. Was that the only time that you were ever over on that land? A. Yes, sir.

Q. What time did you start in the morning, Mrs. Dodd? A. About seven o'clock in the morning.

Q. What time did you get home?

A. After six in the evening.

Q. And how many claims were made at that time, if you know? A. Three, I believe.

Q. Your father, and your husband and yourself made claims at that time? A. Yes, sir.

Q. What did Marion do when he led you over there. What did he do after he got there?

A. Why, he looked over the land and looked at the timber.

Q. Where was the land? It was on the mountain-side, wasn't it? A. Yes, sir.

Q. Timber was growing on the mountain side, wasn't there? A. Yes, sir.

Q. You didn't walk up on the mountain side, did you? A. Yes, sir.

Q. Walked up the mountain? A. Yes.

Q. How far up did you go?

A. Oh, I don't know just how far. It wasn't so very steep and rough.

Q. Well, it was the ordinary mountain side, wasn't it, in that country? A. Yes, sir.

Q. You don't mean to say that you walked to the top of it?

A. No, I didn't walk to the top of it.

(Testimony of Cora Dodd.)

Q. Well, how far did you walk?

A. Oh, I don't know how far it was.

Q. Well, how far up the mountain side did you walk, Mrs. Dodd? Can you tell us how far?

By Mr. BICKFORD.—We object to the counsel repeating the question to the witness when she has already answered the question fully, and stated that she does not know.

By the EXAMINER to the Witness.—You may answer.

A. I don't know just far it was.

Q. Do you know whose claim your brother first pointed out to you three? A. Mine.

Q. Yours first? A. Yes, sir.

Q. And then whose next?

A. I don't know whether it was my husband's or my father's.

Q. All three of them Marion pointed out, and then you came home?

By Mr. BICKFORD.—We object to the question for the reason that it is leading, and upon the further ground that it is not the testimony of the witness, but simply the construction of the testimony that counsel himself places upon it.

A. Yes, sir.

Q. That is true, is it not, Mrs. Dodd?

(Testimony of Cora Dodd.)

By Mr. BICKFORD.—We object to the question upon the ground that it is leading. We further object to it upon the ground that it is not the testimony as given by the witness, but is simply the statement of counsel as to what purports to be the testimony, when in fact it is not a correct statement of the testimony.

A. Yes, sir.

Q. Well, after you three had went back to Marion's home after he had pointed out the land to you as you have now testified, did you go back to your own home the next morning? A. Yes, sir.

Q. You went back to your own home the next morning? A. Yes, sir.

Q. Was your entry made in the Helena land office?

A. Yes, sir.

Q. Here in town? A. Yes, sir.

Q. Do you remember the fact that after yourself going to the mountain side as you have now testified of coming here to Helena? A. Yes, sir.

Q. Who came with you?

A. My husband and Mr. Griswold.

Q. Mr. Griswold you said. A. Yes, sir.

Q. Where did you start from?

A. We started from my home.

Q. From Bonner?

A. Oh, no, we went to Missoula, and then started from Missoula, took the train from Missoula.

Q. Who paid the way? A. I don't know.

(Testimony of Cora Dodd.)

Q. Didn't Mr. Griswold?

By Mr. WALSH.—Well, we object to that as being leading.

A. I don't know.

Q. You didn't pay anything yourself, did you?

By Mr. WALSH.—We object to that as being leading.

By Mr. WALSH.—We object to the question for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. And it was just you and your husband, and Mr. Griswold?

By Mr. WALSH.—We object to the question for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

Q. And came on here to Helena, did you?

By Mr. WALSH.—We object to the question for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. Had you ever been here before, Mrs. Dodd?

By Mr. WALSH.—We object to the question for the reason that it is leading and upon the further ground

(Testimony of Cora Dodd.)

that it is irrelevant and immaterial to the issues in this case.

A. No, sir.

Q. Never been here before you say?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and has no bearing upon the issues in this case and further that it is leading.

A. No, sir.

Q. Do you know whether your husband had been here before or not?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and has no bearing upon the issues in this case, and further that it is leading.

A. No, sir, I don't think so.

Q. What did you say?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and has no bearing upon the issues in this case, and further that it is leading.

A. No, sir.

Q. Never had before?

By Mr. BICKFORD.—We object to the question upon the ground that it is leading.

A. No, sir.

(Testimony of Cora Dodd.)

Q. Did you go to the same place that Mr. Griswold went?

By Mr. BICKFORD.—We object to the question upon the ground that it is leading.

A. Yes, sir.

Q. Where did he take you?

By Mr. BICKFORD.—Objected to as being leading.

A. To the land office.

Q. You went to the land office the first thing you did, did you?

A. No, sir, we got here in the night and went to the land office the next morning.

Q. What hotel did he take you to?

By Mr. BICKFORD.—We object to that as being leading.

A. I cannot speak the name of the hotel.

Q. The Grand Central? A. No, sir.

By Mr. BICKFORD.—The Cosmopolitan, I suppose she means.

Q. Is that it, the Cosmopolitan? A. Yes, sir.

Q. And the next morning he took you to the land office?

By Mr. WALSH.—That is also objected to for the reason that it is leading and incompetent and irrelevant and immaterial to the issues raised in this case.

A. Yes, sir.

(Testimony of Cora Dodd.)

Q. What was done now, Mrs. Dodd, go on and state what took place there at the land office.

A. Why we went and filed on our claims.

Q. Went and filed on your claims?

A. Yes, sir.

Q. Did you know that you had to have witnesses?

A. Yes, sir.

Q. Did you know what witnesses were given for you?

A. Yes, sir.

Q. Who were they?

A. My husband and Mr. Griswold.

Q. Your husband and Mr. Griswold were the witnesses?

A. Yes, sir, when we filed. That is all I can remember of.

Q. Had you received your hundred dollars up to this time?

By Mr. BICKFORD.—We object to the question upon the ground that it is leading, and further as presupposing the testimony of the witness as to facts which have not been testified to by her as yet, that she had a hundred dollars coming.

A. Yes, sir.

Q. When were you to get your hundred dollars, Mrs. Dodd?

By Mr. BICKFORD.—We object to the question for the reason that it is leading. And further, as presupposing the testimony of the witness that she had a

(Testimony of Cora Dodd.)

hundred dollars coming when in fact she has not given any such testimony.

By Mr. WALSH.—We also object to this question because it asks for no fact from the witness. If counsel desires to get from the witness any testimony concerning any conversation had with anybody he should ask the witness to state what the conversation was that took place at that time?

By Mr. MAYNARD.—She has already testified that her brother told her that she was to get a hundred dollars.

A. After we proved up, I believe, as I understand it.

Q. You understood that you were to receive it after you proved up? A. Yes, sir.

Q. And from whom? A. I don't know.

Q. Had Mr. Griswold told you? A. No, sir.

Q. He told you you were to get a hundred dollars from somebody, did he?

By Mr. WALSH.—We object to the question for the reason that it is leading and further upon the ground that the witness has not testified that she ever had any conversation with Mr. Griswold at all.

A. No, sir, he didn't say that.

Q. It was from Marion then, was it?

By Mr. WALSH.—We object to the question upon the ground that it is leading. We also object to the question upon the further ground that the witness has not

(Testimony of Cora Dodd.)

stated in her testimony that she ever had any conversation with Marion to that effect at all.

A. Why, yes, he told me he understood that we were to get a hundred dollars.

Q. When did you return to your home?

A. After we were here in Helena?

Q. Yes.

A. We came in the night and then went to the land office the next morning, and went home that same day from the land office.

Q. And your husband with you? A. Yes, sir.

Q. Did Mr. Griswold return with you?

A. I couldn't say whether he did or not.

Q. Can you recollect as to whether he went back on the train with you?

A. No, sir, I didn't see him on the train.

Q. You had nothing to do with the paying of the expenses?

By Mr. WALSH.—We object to that upon the ground that it is leading, and irrelevant and immaterial.

A. No, sir.

Q. Do you remember the fact, Mrs. Dodd, of coming back here again? A. Yes, sir.

Q. For what purpose did you come back?

A. To prove up.

Q. Who came back with you?

A. My husband, my father, my brother and Mr. Griswold.

(Testimony of Cora Dodd.)

Q. Your father, that is, Harrison Dodd?

A. No, sir, Doc. Watson.

Q. Oh, your father, you mean. A. Yes, sir.

Q. And your husband and yourself and who else?

A. My brother.

Q. Who was that? A. Marion.

Q. Oh, Marion came back with you?

A. Yes, sir.

Q. And Mr. Griswold too? A. Yes, sir.

Q. How many made their final proofs on that date?

A. Three, I believe, two besides myself.

Q. Who were they?

A. My brother and my father?

Q. Your brother and your father?

A. Yes, my husband and my father.

Q. Your husband and your father and yourself made the final proofs? A. Yes, sir.

Q. Who were present in the land office besides these parties as witnesses?

A. Well, my father and my brother and Mr. Griswold and my husband. That is all I knew at the time.

Q. Had you seen Mr. Cobban at this time at all?

A. No, sir.

Q. Nor anybody representing him?

A. No, sir.

Q. Can you state as to whether or not after you made your final proofs you received any paper from the officers at the land office? A. Yes, sir.

Q. What paper did you receive?

(Testimony of Cora Dodd.)

A. I received a paper, but I don't know what it was.

Q. Did you receive it yourself?

A. No, sir, I didn't receive it myself.

Q. Who did receive it.

A. My husband, I believe, received it.

Q. Are you able to say whether he did or not?

A. No, I am not able to say that.

Q. Do you know what was done with those papers?

A. No, sir.

Q. Did you ever see it afterwards?

A. No, sir.

Q. Not your own paper? A. No, sir.

Q. You don't know who took it?

By Mr. WALSH.—We object to the question on the ground that it is leading and irrelevant and immaterial.

A. No, sir.

Q. Who paid the money in at the time?

A. I don't know who paid the money.

Q. Did you see any money, Mrs. Dodd?

A. No, sir.

Q. You didn't have any yourself, either?

A. No, sir.

Q. Did you see your husband have any money?

A. No, sir.

Q. And on the date that the final proofs were made by your husband and your father and yourself you didn't see any money paid at all by anybody?

A. No, sir.

(Testimony of Cora Dodd.)

Q. You afterwards sold this land to Mr. Cobban, did you not?

By Mr. BICKFORD.—We object to the question for the reason that it is leading—

Q. — that you took up in this way.

By Mr. BICKFORD.—We object to the question for the reason that it is leading.

A. Yes, I understood so; I understood that it was sold to Mr. Cobban.

Q. When did you see Mr. Cobban?

A. After I proved up on my claim.

Q. That was the first time? A. Yes, sir.

Q. How long after you proved up was it that you saw him? A. It was the next day.

Q. The next day? A. Yes, sir.

Q. Where was it that you saw him?

A. It was in Missoula.

Q. That is, you went from here directly to Missoula?

A. Yes, sir.

Q. Where did you go to, to his office?

A. Yes, went to his office.

Q. Who took you there? A. My husband.

Q. Who else went with you? A. No one else.

Q. No one else, just you and your husband.

A. Yes, sir.

Q. Where was your father?

A. He was in Missoula but he didn't go up to Cobban's office with us.

(Testimony of Cora Dodd.)

Q. Who told you to go to Cobban's office?

By Mr. WALSH.—We object to that as being immaterial.

A. Why, my brother.

Q. Doc. Watson, do you mean?

A. No, Marion Watson.

Q. Where did he tell you that, Mrs. Dodd?

A. Why I don't know just where it was that he told us.

Q. In this town here?

A. I couldn't say whether it was in here or not.

Q. Did you see Mr. Cobban there himself?

A. Yes, sir.

Q. You and your husband were there together?

A. Yes, sir.

Q. And you deeded—both of you deeded your land to Mr. Cobban?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. And did you then receive your one hundred dollars?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir, we did.

Q. You received your one hundred dollars and your husband received his one hundred dollars?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

(Testimony of Cora Dodd.)

Q. How did he give it to you, Mrs. Dodd, was it in money?

By Mr. WALSH.—We object to that as leading.

A. No, in a check.

Q. A check?

By Mr. WALSH.—We object to that upon the ground that it is not the best evidence of the fact sought to be proved by the witness. The check itself being the best evidence of what it was. A. Yes, sir.

Q. When you received this check what did you do with it?

By Mr. WALSH.—We object to that question on the ground that it is irrelevant and immaterial.

A. My husband took it.

Q. What did you say?

A. My husband took it, I said.

Q. Your husband took the check? A. Yes, sir.

Q. Did you afterwards get the money on it?

By Mr. WALSH.—We object to that on the ground that it is leading in the first place, and in the second place it is irrelevant and immaterial as to what she did, and whether she got the money or not.

A. Yes, sir.

Q. And you afterward got your one hundred dollars also? A. Yes, sir.

Q. Was that the only time you ever saw Mr. Cobban to know him, Mrs. Dodd?

(Testimony of Cora Dodd.)

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. The only time you ever saw him?

A. Yes, sir.

Q. Have you ever seen him since?

A. Yes, sir, just passed by him, but I never spoke to him.

Q. Never had any conversation with him since?

A. No, sir.

Q. How long were you and your husband in Mr. Cobban's office?

A. Oh, I couldn't say, not very long, not over half an hour.

Q. Not over half an hour?

A. Yes, sir, as near as I can state it.

Q. Do you remember anything about the paper that you signed? A. No, sir.

Q. Don't remember the paper you signed?

A. No, sir.

Q. Do you remember who were in the office at the time besides yourself and your husband and Mr. Cobban?

A. That was all.

Q. When the paper was handed you to sign by him was it already prepared when you went in there?

By Mr. WALSH.—We object to that as being irrelevant and immaterial and leading.

(Testimony of Cora Dodd.)

A. I couldn't say as to that.

Q. Did you see him writing anything?

By Mr. WALSH.—We object to that as being irrelevant and immaterial and leading.

A. Well, he was sitting at the table.

Q. You cannot say whether he wrote or not there at that time? A. No, sir.

Q. How long a time was it, Mrs. Dodd, after you went into his office there before you signed the paper?

A. Just a few minutes.

Q. You don't remember that you saw him writing anything, do you?

By Mr. BICKFORD.—We object to the question as being irrelevant and immaterial; and as having already been asked of the witness and fully answered by her.

A. No, sir.

Q. What else took place there, Mrs. Dood, after you went into the office there with your husband, at the time that you signed this paper that you have spoken of.

A. Nothing.

Q. Nothing was said or done further?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial, and relates to a time subsequent to the final proof made as testified by the witness, and therefore can have no bearing whatever upon the issues in this case; and that it is leading.

A. No, sir.

Q. Now, I understand you, Mrs. Dodd, to say that you

(Testimony of Cora Dodd.)

simply went in there and signed your paper and came out?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial and relates to a time subsequent to the final proof made as testified by the witness, and therefore can have no bearing on the issues in this case. Also as being leading.

A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mrs. Dodd, do you remember the conversation that you had with your brother about taking up this land? A. No, I do not.

Q. He came to your house, stopped at your house on his way to Missoula, did he? A. Yes, sir.

Q. You cannot remember exactly the conversation that you had with him, can you?

A. No, sir; he spoke about taking up a timber claim, that is about all that he said.

Q. About taking up a timber claim?

A. Yes, sir.

Q. Well, now I wish you would go on, Mrs. Dodd, and tell us, as nearly as you can, what it was your brother said about taking up a timber claim on this occasion.

A. He spoke about it and said that we could take up a timber claim; and it was understood that we could get a hundred dollars out of it.

Q. And how was it possible that you could get a hundred dollars out of it Mrs. Dodd?

(Testimony of Cora Dodd.)

A. Oh, I don't know; I just understood that I could get a hundred dollars out of it.

Q. Well, that is what I wanted to know.

A. Yes, that is what I understood.

Q. You understood that you could get a hundred dollars out of it? A. Yes, sir.

Q. Well, I want to know from you about the matter, and as to what your brother, Marion Watson, said about the matter, if you know.

A. I don't know. That is about all he said.

Q. That was about all he said?

A. Yes, that we were to get a hundred dollars on the claim.

Q. That you could take up a timber claim and get a hundred dollars out of it? A. Yes, sir.

Q. That was all that was said?

A. Yes, that was all that was said to me.

Q. Well, what did he say as to whom you could get the hundred dollars from?

A. Well, I understood him to say Mr. Cobban.

Q. What was Mr. Cobban to give you the hundred dollars for?

A. Why, for my claim, I suppose.

Q. For your timber claim? A. Yes, sir.

Q. That is to say, that you could sell your timber claim to Mr. Cobban for a hundred dollars?

A. Yes, sir.

Q. How long have you lived in that neighborhood, Mrs. Dodd? A. Four years.

(Testimony of Cora Dodd.)

Q. Well, there were other people buying claims in that neighborhood beside Mr. Cobban, weren't there?

A. I don't know.

Q. You don't know about that?

A. No, sir, I don't know about that.

Q. But that is all that you remember that your brother said about it?

A. That is all that I remember.

Q. That you were to take up a timber claim?

A. Yes, sir.

Q. And after you had made final proof you could sell your timber claim to Mr. Cobban and get a hundred dollars for it? A. Yes, sir.

Q. Now, do you remember anything else that your brother said about it? A. No, sir.

Q. You have told us now all you remember about the conversation? A. Yes, sir.

Q. Well, now, had you made any agreement with anybody whatever that you would sell this claim to Mr. Cobban? A. No, sir, I had not.

Q. Had you made any agreement that you would sell it to any particular person after you had made final proof? A. No, sir, made no agreement at all.

Q. The fact is, isn't it, Mrs. Dodd, that your husband transacted most of this business for you?

A. Yes, sir.

Q. And you trusted him to manage it for you?

A. Yes, sir.

Q. Well, did you know that it would take some

(Testimony of Cora Dodd.)

money to acquire this land from the government; that you would have to buy the land? A. I didn't know.

Q. You didn't know that? A. No, sir.

At this point a recess was taken until two o'clock of the same day.

Monday, March 3d, 1902, 2 P. M.

George H. Macdougall, being absent, with the consent of parties, Charles W. Blair was appointed stenographer to take the testimony of the witnesses in shorthand and transcribe the same:

CORA DODD, being called for cross-examination, testified as follows:

(Mr. BICKFORD.)

Q. I believe that you stated this forenoon Mrs. Dodd, that when you came here to Helena to make your final proof, you signed certain papers, swearing to the truth of them at the time?

A. Yes, I did, but I guess that was a mistake.

Q. Now, you went before the officers in the land office? A. Yes, sir.

Q. While there you were examined and questions were asked you and the answers were put down in writing, as I understand? A. Yes, sir.

Q. When they got all through and signed your name to the bottom of the paper, you were sworn to these papers were you not? A. Yes, sir.

Q. Your witnesses also were sworn at that time?

(Testimony of Cora Dodd.)

A. Yes, sir.

Q. Now, I have in my hand here the papers which were made out at that time, Mrs. Dodd, and I call your attention to this particular paper, it says: "Cora Dodd, being called as a witness in support of his application to purchase lots 3 and 4 and the east half of the southwest quarter of section 18, township 14, north range 13 west, testified as follows"; then comes your testimony in one way or another, and over here the name is signed, "Cora Dodd." Do you recognize that as your signature?

A. Yes, sir.

Q. Among other things the question is asked you:—"Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any manner, with any person whomsoever, by which the title you have acquired from the government of the United States may inure in whole or in part to the benefit of any person except yourself," and your answer was, "No, sir," is that correct?

A. That is correct, yes, sir.

Q. "Perfecting this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of another person?"

A. Yes, sir.

Q. And your answer is "I did," is that correct?

A. Yes, sir.

Q. Now, you said your witness' name was M. E. Watson, wasn't it? A. Yes, sir.

(Testimony of Cora Dodd.)

Q. Do you recognize that as the signature of the witness? A. Yes, sir.

Q. "The witness is shown the statement of M. B. Watson, the witness who was called and sworn in behalf of the claimant at the time of hearing the final proof."

Q. Now, go back a little further in point of time to the time when you made your entry, when you first came to the land office in Helena; this was made in July, 1899. Is that your signature to this?

"Witness is shown form 4-537 Timber and Stone Land sworn statement, which reads as follows:

Land Office, Helena, July ———, 1899.

I, Cora Dodd, of the town of Bonner, County of Missoula, State of Montana, desiring to avail myself of the provisions of the act of Congress of June 3d, 1878, entitled 'An Act for the Sale of Timber Lands in the State of California, Oregon, Nevada, and in Washington Territory,' as extended to all the public land states by Act of August 4th, 1892, for the purchase of the southwest quarter (being lots 3 and 4) and the east half of the southwest quarter of section 18, township 14 north, of range 13 west in the District of land, subject to sale at Helena, Montana, do solemnly swear that I am a native citizen of the United States, of the age of 26 years, and by occupation a housekeepr; that I have personally examined said land and from my personal knowledge state that said land is unfit for cultivation, and chiefly valuable for its timber; that it is uninhabited; that it contains no mining or other improvements

(Testimony of Cora Dodd.)

nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the government of the United States may inure in whole or in part to the benefit of any person, except myself; and that my post-office address is Cora Dodd, Bonner, Missoula County, Montana." Now, that statement that you made at that time Mrs. Dodd is correct, is it not? A. Yes.

Q. As I understand you, you had no conversation with anybody, with reference to the sale of this land until after the time that you made your final proof and gone over from Helena again to Missoula? A. Yes.

Q. At that time you and your husband joined in a deed by which you conveyed the land? A. Yes, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Who did you say this morning, Mrs. Dodd, were your witnesses at the time you made your final proof?

A. Marion Watson, Griswold and Doc Watson.

Q. That was on the 10th of October, 1899, as appears from the original papers which I now hold in my possession (the register of the land office at Helena, Mr. Greene, being present and giving them to me for the purpose of

(Testimony of Cora Dodd.)

this examination, he having the same in custody). You thought it was the next day that you deeded to Mr. Cobban when you were on the stand this morning?

A. Yes, sir—that is—

Q. It is not possible that you made the deed on the same day that you made final entry?

Mr. BICKFORD.—Objected to as being not a question propounded to the witness, but a statement of counsel.

A. I do not remember whether it was the same day, but I think it was.

Q. Well, let me refresh your recollection. Do you remember what time in the day you left Helena?

A. Somewheres about ten o'clock.

Q. That was the morning train? A. Yes.

Q. West, and which arrived at Missoula at about 3 o'clock in the afternoon, doesn't it? A. Yes, sir.

Q. You may state now as to whether you immediately went from the station to Mr. Cobban's office.

Mr. BICKFORD.—Object to that as leading.

A. Yes, I am pretty sure we did.

Q. So that you conveyed to him on that same afternoon?

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

(By Mr. MAYNARD.)

Q. I show the witness a certified copy of her deed to Mr. Cobban, which has been received in evidence—

(Testimony of Cora Dodd.)

By Mr. BICKFORD.—To all of which we object for the reason that it is not proper redirect examination, and if admissible at all is permissible only as direct examination of the witness.

Mr. MAYNARD.—The witness identifies the fact of her having made the deed and her attention is called to the fact that the deed itself bears witness the 10th of October, and the execution of the instrument was made on that day.

Mr. BICKFORD.—To all of which we object on the ground that the date of the deed is not conclusive of the time when the deed itself was executed, and for the further reason that the deed itself is the best evidence of its contents and of the facts contained therein.

Mr. MAYNARD.—I now read from the deed, which I hold in my hand, which I have just shown the witness.

Mr. BICKFORD.—To which we object for the reason that it is not proper redirect examination.

Mr. MAYNARD.—"This indenture made this 10th day of October, A. D. one thousand eight hundred and ninety-nine, between Edward Dodd and Cora Dodd, husband and wife, of Bonner, Montana, parties of the first part, and R. M. Cobban of Missoula, Montana, parties of the second part, witnesseth, etc.," and the acknowledgment is as follows:

(Testimony of Cora Dodd.)

State of Montana, } ss.
County of Missoula. }

On this 10th day of October, 1899, before me, Dan H. Ross, a notary public in and for said county of Missoula, State of Montana, personally appeared Edward Dodd and Cora Dodd, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Signature) DAN H. ROSS,
Notary Public in and for Missoula County, State of Montana."

And the description contained in this deed is as follows:

"Real estate situated in the county of Deer Lodge and State of Montana, to wit: The northwest quarter of section eight and lots 3 and 4, and the east half of the southwest quarter of section 18, all in township 14 north, of range 13 west of the Montana meridian." Consideration price is named $2,000.00.

This description embraces a description of the land taken by the witness and her husband, Edward Dodd.

By Mr. BICKFORD.—To the introduction of the deed at this time we interpose the objection that the deed does not purport to convey the same land that is mentioned in

(Testimony of Cora Dodd.)

the complaint of the complainant herein filed, and does not convey or purport to convey any land which is in controversy in this action, and for the further reason that it is irrelevant and immaterial because not from its description pertaining to any land concerning which this action is brought.

Mr. MAYNARD.—In reply to counsel and in answer to the objection that he has just made, I desire to have appear upon the records as follows:

That the particular description of her own entry is the "southwest quarter, being lots 3 and 4 and the east half of the southwest quarter of section 18, township 14 north of range 13 west, in the district of land subject to sale at Helena, Montana," and that I propose to follow this by the testimony of her husband with his description of his entry, and that the two descriptions of land are merged and contained in their joint deed to Mr. Cobban; that is, that the description contained in Mr. and Mrs. Dodd's entries both together make up the land which is contained in their joint deed to Mr. Cobban.

Mr. BICKFORD.—To which testimony the defendant will interpose the objection that the deed offered in evidence and the proposed evidence of the complainant does not describe any land upon which either the witness now upon the witness stand or Edward Dodd made final proof, and does not describe any land which is mentioned in the bill of complaint herein filed.

CORA DODD.

Subscribed and sworn to before me this 4th day of March, 1902.

HENRY N. BLAKE,
Examiner.

EDWARD DODD, being sworn as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Dodd, you were in this office this morning?

A. Yes, sir.

Q. You know the lady that has just left the stand?

A. Yes, sir.

Q. Who is she? A. She is my wife.

Q. Did you hear her testimony that she gave this morning? A. Yes, sir.

Q. Since adjournment of the court this forenoon you have been with her until convening this afternoon?

A. Well, most of the time, not all the time.

Q. Were you in Mr. Walsh's office since the forenoon recess? A. Who?

Q. Mr. Walsh, the lawyer that was here?

A. Yes, I guess that was his name.

Q. The lawyer over here in the Granite Building?

A. Yes, I think so; I guess that was his name; I was talking with a lawyer up there anyway.

Q. You were talking with a lawyer?

A. Yes, sir; I suppose he was a lawyer; they said he was a lawyer.

(Testimony of Edward Dodd.)

Q. How did you happen to go there?

A. Well, he said he wanted to speak to me; talk with me about it; told me to be up there at half-past one and I went up there.

Q. How many witnesses that the government has subpoenaed here were present with you at the time in Mr. Walsh's office?

A. Three, I believe; my father and two others.

Q. Your father was there? A. Yes, sir.

Q. Who are the two others?

A. Mr. Dildine and, I cannot thing of his name—Eddy and this other man Doney, come to think of it, there were four.

Q. When did you find out he was your attorney?

A. I did not find it out until this forenoon, and I heard him speaking to her.

Q. You heard what?

A. I heard my wife's testimony and speaking about him being her attorney, that is the first I found out.

Q. The first you knew that either you or your wife had an attorney?

A. Yes, sir; that is the first I knew anything about it.

Q. So, if Mr. Walsh is your attorney in the criminal matters which are pending here, in which you are arrested for perjury you do not know anything about it yourself?

A. No, sir; in fact this is the first time I have been

(Testimony of Edward Dodd.)

here, I do not know that I have been arrested for perjury.

Q. In the conversation that you had with Mr. Walsh up in his office, it was relative to your testimony here, wasn't it?

By Mr. BICKFORD.—We object to that as leading.

A. Well, yes.

Q. And the testimony which your wife gave this morning?

A. There was nothing—I do not think there was anything said about that at all.

Q. Was there anything said about the subject of a loan?

Mr. BICKFORD.—We object to that as leading.

A. As a loan.

Q. Yes, that you understood when you got this money from Cobban it was as a loan?

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. That was what was talked about in the office?

Mr. BICKFORD.—Objected to as leading.

A. That was mentioned, of course.

Q. Now, your wife said that the first you had any information about this matter was when your father in law came down to your house?

A. Watson; yes, sir.

Q. What was his first name? A. Marion.

Q. Where is Marion Watson now?

(Testimony of Edward Dodd.)

A. The last I heard of him he was in Oregon, the Willamette Valley, near Eugene, Oregon; that was the last I heard of him, he had been over in Idaho awhile and he may have gone back there again, some of his folks live there; he went there on a visit.

Q. Whereabouts in Idaho?

A. I don't know the name of the place; I heard he was in Idaho.

Q. Do you know of anybody here in town that happens to know now?

A. Only my father and I guess he don't know any more about where he is than I do; my father and my wife.

Q. How long has he been out of this state?

A. It was I think something like a year, maybe more or less I do not remember.

Q. Do you know Mr. Griswold?

A. Yes, sir.

Q. How long have you known him?

A. Well, the first time I saw him I think was about close to three years ago.

Q. Have you heard anything about these entries under the Stone and Timber Act until Marion came to your house.

Mr. BICKFORD.—Objected to as leading.

A. No, sir; I had not heard anyone speak about it around there; of course, I had heard that a person could take up a timber claim; of course, I understood we could take a timber claim, but I never heard anything of these claims until I saw him.

(Testimony of Edward Dodd.)

Q. You heard what your wife said this morning in regard to what Marion said to you? A. Yes, sir.

Q. Is that true?

Mr. BICKFORD.—We object for the reason that it is calling for a conclusion of the witness.

A. I do not remember just exactly how she did word it.

Q. How do you wish to be understood, that you remember what your wife swore to, or that you don't remember?

A. Well, I say I cannot remember just what it was, or what she said about the matter.

Q. You remember what Marion told you, don't you?

A. Yes, sir.

Q. What did he tell you?

Mr. BICKFORD.—Objected to as being hearsay, irrelevant, and immaterial.

A. You mean the first talk about the timber claims?

Q. Yes, sir. When he came down to your house as your wife testified this morning?

Mr. BICKFORD.—Objected to as being hearsay, irrelevant and immaterial.

A. He came down there and asked me if I wanted to take up a timber claim. I said I would like to take one if I could, he said Mr. Cobban of Missoula will loan money enough to prove up on this claim and will give one hundred dollars over and above the expenses, for the timber after it is proved up, that is the way he spoke to me.

(Testimony of Edward Dodd.)

Q. That Cobban would advance the money to pay for the land?

A. I said he would loan the money to pay for this land, to prove up on this land and pay one hundred dollars over and above the expenses after we had made final proofs.

Q. That you would get one hundred dollars at the time?

A. Yes, that I could get one hundred dollars from Mr. Cobban.

Mr. BICKFORD.—We object to the foregoing question because it is leading.

Q. When he told you that you could get one hundred dollars from Mr. Cobban after making the entry, then you and your wife started to make the entry ?

Mr. BICKFORD.—Objected to as leading.

A. Not that, the first time hunted—myself and Watson, brother in law, and two of my brothers went up there and hunted up this timber the first thing we done, was over the land, that was the first time I went on it.

Q. Let me understand you, you say after Watson told what you have now testified to, what did you do next?

A. We went up a few days after, I do not know exactly how long, I think it may have been a week from that time we went up and look up some timber.

Q. Who went up?

A. Marion Watson and myself and two of my

(Testimony of Edward Dodd.)

brothers, Allen Dodd and Harrison Dodd, went up and hunted up some timber.

Q. You three brothers and Mr. Watson?

A. Yes, sir.

Q. You went up with him?

A. Yes, sir, we went up with Watson first, I do not know as we went up any more with him than he did with us, we all went together.

Q. Did your wife go at that time?

A. No, sir.

Q. She did not?

A. No, sir, because I did not know where we were going, we did not want to take her around in the woods, she could not stand the trip.

Q. No women folks went with you?

A. No, sir, not the first time?

Q. Where did you say you went?

A. I went up in the mountains, up in the timber part, the Blackfoot, I do not remember just how far from what they call Clearwater postoffice.

Q. How many were there in this party?

A. Four.

Q. Three brothers and Watson? A. Yes, sir.

Q. Where did you say you went to first?

A. Well, I went up to where Watson lived; he lived at that time where he had been logging up there on the Blackfoot; then we went from there up on the mountain back of his place, and stayed there until we went up the second time.

(Testimony of Edward Dodd.)

Q. You went up to Watson's house?

A. Yes, sir, his camp is where he was camped logging.

Q. How long did you stay there?

A. I don't remember just how long we did stay now.

Q. I mean at his house?

A. Two or three days, something like that, I do not know now just how long we did stay.

Q. What I want to know is how long you were away from home on this occasion? A. The first time?

Q. Yes.

A. We started early in the morning—

Q. How long were you from your home where you live at Bonner?

A. Something like three or four days, I do not remember exactly how long it was.

Q. Were you gone from your home at Bonner until you returned, three or four days?

A. Something like that, I do not remember just how long it was now, it seems to me though it was three or four days.

Q. How far was Watson's house from yours?

A. His camp, you mean?

Q. Yes, from your home in Bonner?

A. I do not live in Bonner, about seven or eight miles from the Bonner postoffice.

Q. Wherever you live?

A. I do not know, it is somewhere's about 25 or 30 miles; I do not know exactly how far it is.

(Testimony of Edward Dodd.)

Q. How did you go?

A. Went with team up to his place, in a wagon.

Q. How did you get back from his place to your home?

A. The same way we went up, with a team.

Q. Well, now then, after you got up there, what did you do?

A. Well, we went up—I would not say whether we went up the next day, but I think we did, early the next morning, we started out in a team to see if we could find claims, some timber to take up some claims.

Q. Who went with you?

A. Marion Watson and my two brothers.

Q. Where was the father?

A. Why he was—I do not know just where he was now at this time.

Q. What did you do when you went with Watson?

A. Why, we went up in the timber and went around running out lines and one thing or another looking at the timber, that was there, run out some lines there and found the corners.

Q. Your two brothers, yourself and Watson?

A. Yes, sir.

Q. Had you been to this land before?

A. Well, I would not say for sure whether I was or not; I had been through there when I was hunting.

Q. I mean had you been up there to look at this land for this purpose before?

(Testimony of Edward Dodd.)

A. No, sir, not before we went up hunting some claims.

Q. Watson told you that he was working for Griswold?

Mr. BICKFORD.—We object to that because it is leading, because it is hearsay, because it is irrelevant and immaterial.

A. No, sir, he did not know that I—he was not at that time, I do not think, working for Griswold. I went up there to this, but I never heard anything that he was at that time; I think he might have been right away after.

Q. You won't swear, will you, but what he was working for him at this very particular time?

Mr. BICKFORD.—We object to that as being an effort to cross-examine his own witness and as calling for a conclusion of the witness, not for a statement of facts; second, a question which has already been propounded to the witness and answered by him.

A. No, I won't swear, but I think that he was not at that time.

Q. How long were you up there on the mountain?

A. The first time we went up?

Q. That is the time you are testifying to.

A. I told you we went up early in the morning, stayed there and came back pretty late in the evening, got back to Watson's camp.

Q. Then you were one day to it?

(Testimony of Edward Dodd.)

A. Yes, sir.

Q. How many locations were made on that day?

A. I do not remember, I think there was, I believe, three; I think we found either two or three—I think it was three.

Q. Then you went home and came back again?

Mr. BICKFORD.—Objected to as leading.

A. Why, yes, we went home and came back again.

Q. How long after that?

A. I do not remember, not a great while.

Q. About how long?

A. Probably four or five days, maybe less; don't think it was long.

Q. Did you have any talk with Mr. Griswold in the meantime? A. No, sir.

Q. Never had any talk with him on the subject?

A. No, sir.

Q. And all your talks that you had in regard to taking up these claims was with Mr. Watson, your brother in law.

Mr. BICKFORD.—Objected to as leading.

Q. He is the one that told you what you could do?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. And who went with you when you went up the second time?

A. My wife, myself, my father in law—Watson, I think.

(Testimony of Edward Dodd.)

Q. What is his name? A. Doc. Watson.

Q. Is he here in town? A. No, sir.

Q. Where is he?

A. He was in Farmington, Idaho, the last I heard of him; I suppose he is there yet, but I think he is coming back.

Q. Doc. Watson is in Palouse, Idaho?

A. Farmington, Idaho.

Q. You say your wife went back with you?

A. Yes, sir.

Q. Who else?

A. My wife, and, well, Watson, he lived up there; my wife and myself and, I believe, one of my brothers, that is, went from my place up to the camp, but I think us three was all that went up this second time I went up to look at the timber.

Q. What did you do after you got up there with your wife?

A. We walked over the land as much as we could, looked at it and found one or two of the corners, went across it, walked around and looked at the timber.

Q. Was there any roads up there where you made the location?

A. No, sir, there is no road goes up there that I know of, that is not up into the timber where we took these claims there may be a road which goes pretty well into it, but it don't go into the timber.

Q. What was it, just simply in a wild state?

(Testimony of Edward Dodd.)

A. Wild, mountainous country.

Q. No roads nor paths of any kind?

A. No, sir; not that I know of.

Q. And you and your wife, how did you go over there from the camp? A. Walked from there up.

Q. And walked back? A. Yes, sir.

Q. And such examination as you made was between your periods of leaving the camp and going back the same day?

Mr. BICKFORD.—Objected to as leading.

A. I was on there two different times.

Q. As far as you and your wife were concerned?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, that is about all.

Q. Then did you go home that night or the next morning? A. Down to the Blackfoot, back home?

Q. Yes, sir.

A. No, we did not go home that night; I do not know whether we went back the next day or not; I think we did, though.

Q. How long after that before you came to Helena?

A. I do not remember that.

Q. You do not remember how long it was after your return home before you came to Helena?

A. No, sir.

Q. Do you remember who it was who came with you?

A. To Helena?

Q. Yes.

(Testimony of Edward Dodd.)

A. There was Mr. Griswold and my father in law, Doc. Watson, myself and my wife.

Q. When did you see Mr. Griswold about his coming here with you?

By Mr. BICKFORD.—We object to that as leading and presupposing that testimony has been given with reference to a fact concerning which no question was asked.

A. Saw him in Missoula.

Q. Where do you see him there?

A. I do not remember where I did see him there.

Q. What did he say to you or you to him about coming up here.

Mr. BICKFORD.—Objected to as being hearsay.

A. Well, he was to come as a witness, to come over to Helena as a witness.

Q. Come as a witness? A. Yes, sir.

Q. You had never seen him before that time relative to this matter?

A. No, sir—I believe I had seen him before that time.

Q. But you had no talk with him?

A. I had no talk with him that I remember about this subject at all, myself,

Q. He had not been up on the land with you?

A. No, sir, I do not know whether he had ever come on the land or not.

Q. Explain then, how it was that Griswold would come here as a witness for you?

(Testimony of Edward Dodd.)

Mr. BICKFORD.—That is objected to on the ground that it calls for a conclusion of the witness and not for a statement of fact.

A. All I know about it is that he said he would come as a witness—and I did not have—I talked with him about the claim and he said he would come as one of the witnesses, and I believe my father in law as the other.

Q. But you did not understand anything about how it was that he proposed to come as a witness for you?

A. Well, I supposed that probably he was working for Mr. Cobban, I heard some one tell him that he was working for Mr. Cobban at that time.

Mr. BICKFORD.—We move to strike out the answer of the witness on the ground that it is not responsive to the question, and further that it is a mere supposition on the part of the witness and not a statement of facts within his own knowledge.

Q. That accounts for the fact that he was coming here as a witness for you, because he was working for Cobban?

Mr. BICKFORD.—Objected to as calling for a conclusion of the witness and not a statement of fact.

A. I suppose so.

A. He as a matter of fact came? A. Yes, sir.

Q. With your wife and yourself?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

(Testimony of Edward Dodd.)

Q. How did you come? A. To Helena?

Q. To Helena when you came with Mr. Griswold?

A. Came on the train.

Q. From Missoula? A. From Missoula.

Q. Was there anybody else in the party besides yourself, your wife and Mr. Griswold?

A. That is all I was acquainted with, and Watson —Doc Watson.

Q. Did he come the first time, at the time of the filing, you say you came twice, you must be careful about that and not mix them up?

A. I do not think he did the first time; I do not remember; I went up there, but I do not think he did come the first time.

Q. Who paid your expenses and railroad fare from Missoula to Helena?

Mr. BICKFORD.—We object to the question for the reason that it is leading; for the further reason that it presupposes that somebody paid the expenses of the witness; for the further reason that it is irrelevant and immaterial and does not prove or tend to prove any issue in the case.

A. Mr. Griswold.

Q. He paid all the expenses of the trip from Missoula to Helena, and return, didn't he?

Mr. BICKFORD.—Objected as leading.

A. I think so.

Q. What hotel did he take you to?

(Testimony of Edward Dodd.)

Mr. BICKFORD.—Objected to as irrelevant.

A. The Cosmopolitan over here.

Q. Did he show you where the land office was?

Mr. BICKFORD.—Objected to as leading and irrelevant.

A. Yes, sir.

Q. Had you ever been in the town before?

Mr. BICKFORD.—Objected to as irrelevant.

A. No, sir.

Q. And introduced you to the officers at the land office?

Mr. BICKFORD.—Objected to as leading and as being irrelevant and immaterial and presupposing a state of facts which have not been proven.

A. Mr. Griswold, yes, sir.

Q. I show you the original statement, look at that signature, is that your signature?

A. Yes, sir, I think it is.

Q. It looks like it? A. Yes.

Mr. MAYNARD.—It is the original statement of Edward Dodd that was made before Mr. Greeme on the 25th of July, 1899, and the description is "the northwest quarter of section 8, township 14 north, of range 13 west, in the district of land subject to sale at Helena, Montana. Timber and Stone Land Sworn Statement."

Q. Do you remember whether you returned to your home after your visit here to Helena?

(Testimony of Edward Dodd.)

A. Why, yes, we went home after we came to Helena.

Q. By what way?

A. By rail to Missoula, I believe, and I took my team then and went home.

Q. From Missoula? A. Yes, sir.

Q. Was Mr. Griswold with you?

A. No, sir, he did not come back with us, I do not think he did, if he did I did not see him on the train.

Q. Did you see Mr. Cobban or any one in his employ on that day, or at any time after you left Helena before you got home? A. I do not remember.

Q. Well, what do you say?

A. I say I do not remember whether I saw him or not—that day, you mean after we came back from Helena?

Q. The first time after you made your entry?

A. I do not remember.

Q. You had no acquaintance with him?

A. No, sir.

Q. When did you ever see Mr. Cobban to know him and have any business with him on this matter?

A. It was, I believe—on this matter the first time I saw anything of him was when I sold him my timber claim.

Q. That was the first time you had ever seen him—Cobban, to have any dealings with him?

A. That is the first time I ever had any dealings with him at all.

(Testimony of Edward Dodd.)

Q. When the time came to prove up, give your final testimony in the case, you came back here to Helena?

A. Yes, sir.

Q. Your wife came with you? A. Yes, sir.

Q. Who else came?

A. I think Griswold the last.

Q. Mr. Griswold came again with you?

A. Yes, sir.

Q. Who else came with you?

A. Watson, I think, my father in law, Watson.

Q. Your father in law, Doc Watson?

A. Yes, sir.

Q. Is he in Idaho, too?

A. He is in Palouse country at Farmington.

Q. He came—did any other Watson come with you?

A. No, sir, I think not. I do not remember now whether Marion Watson was with us over there; no, I do not think he was. I do not think Marion came either time; I would not be sure, though; I do not remember.

Q. Did you make the trip from your home to Helena the same way as you did before, by wagon to Missoula, then by rail here? A. Yes, sir.

Q. Who paid your expenses the second time?

Mr. BICKFORD.—We object to that because it is presupposing testimony which has not been given; because it is irrelevant and immaterial, and does not prove or tend to prove any issue in the case.

A. Mr. Griswold, I suppose.

(Testimony of Edward Dodd.)

Q. When the final proof was made in the land office, who paid the money in? A. Mr. Griswold, I think.

Q. Do you remember of receiving any paper yourself?

A. No, sir, I do not—you mean here at the land office?

Q. Yes.

A. I do not remember about getting any papers; I may have got some.

Q. You had no money of your own?

Mr. BICKFORD.—We object to that as being leading, and as being irrelevant and immaterial.

A. Yes, I had some money.

Q. Of course, I do not mean to say but what you had a few dollars in your pocket that day; I am not talking about that—

Mr. BICKFORD.—We object to a statement by counsel.

Q. You say Mr. Griswold made payment for your land? A. Yes, sir.

Objected to by Mr. Bickford, as leading.

Q. You did not make payment yourself?

Mr. BICKFORD.—We object to that on the ground that it is leading.

A. No, sir.

Q. How long were you in the land office?

Mr. BICKFORD.—We object to that because it is irrelevant and immaterial.

(Testimony of Edward Dodd.)

A. I do not remember just how long, it was not a great while.

Q. When did you start for Missoula?

A. I forget what time the train is due there now, sometime in the—I forget whether it was in the forenoon or afternoon, I believe we got here at night.

Q. Went to the land office the next morning?

A. Yes, sir, the next day, sometime.

Q. You started back to Missoula that same forenoon, didn't you?

Mr. BICKFORD.—Objected to as leading.

A. I do not remember whether we got through in time to take the train back or not that same day.

Q. You are not able to say whether you did or not?

A. No, sir, I cannot say whether we got back that day or not.

Q. Are you able to tell us who went back with you except your wife, if any one?

A. I believe Mr. Watson—Doc Watson.

Q. Doc Watson went back with you? That is your father in law?

A. Yes, sir—I cannot say for sure now whether he was over that trip or not, but I think he was, I think he was over and went back with us that day when we went back.

Q. Then where did you go after you arrived at Missoula?

A. I think we all stayed over night there, and went

(Testimony of Edward Dodd.)

back the next morning, now, I would not be sure about that, I do not remember whether we went home that day or not, I do not think we did.

Q. You are not able to say whether you did or not?

A. No, sir, I could not say whether we went home that evening or not.

Q. And if the final records show you made the entry on the 10th day of October, 1899, and that you deeded to Cobban on the 10th day of October, 1899, you are not prepared to swear but what the final records are true, are you?

Mr. BICKFORD.—We object to the question because in the first place it is leading; next, because it is irrelevant and immaterial, and third, because it is an attempt on the part of counsel to contradict testimony which has heretofore been adduced by him; fourth, because it is not competent for counsel to contradict by oral testimony record evidence which he himself has introduced; and fifth, because the testimony sought to be adduced from the witness is a conclusion and not a fact to be stated by him.

A. Why, I could not swear but what they are true, of course, now, what you have asked me here whether I stayed over night when here or whether I went home that same day.

Q. The question asked you is this, as to when after you returned to Helena you conveyed this land to Mr. Cobban?

(Testimony of Edward Dodd.)

Mr. BICKFORD.—Objected to as leading.

A. Probably that is what you asked me but I did not understand it that way.

Q. When did you?

A. I would not swear but what it might have been the same day. I say I do not know but what we stayed over night there. I could not swear here that we signed it that day or the next day. If it says there what he has read, I would not wish to say it is not there.

Q. Look at the testimony of claimant there, of Edward Dodd, the original business I hold in my hand; do you recognize your signature? A. Yes, sir.

Q. Can you read that date? A. Yes, sir.

Q. What is that date? A. Tenth, it looks like.

Q. Tenth of what? A. October.

Q. What year? A. 1899.

Mr. BICKFORD.—We object to this and move to strike it out because it is an attempt upon the part of counsel to cross-examine his own witness; next, because the record itself is the best evidence sought to be adduced from the witness.

Q. I now show witness his deed. Can you read that?

A. Yes, sir.

Q. What does that say?

A. Tenth day of October, one thousand eight hundred and ninety nine.

Q. Now, the acknowledgment of the notary; do you see that? A. Yes, sir.

Q. What date is that?

(Testimony of Edward Dodd.)

Mr. BICKFORD.—To all of which we object, for the reason that the record itself is the best evidence of the testimony sought to be adduced.

A. Tenth of October.

Q. Now, having seen these final records, what have you to say as to whether or not it was the same date?

A. After I see this I see that it was the same date; it could but have been if it shows it here.

Q. You have a distinct recollection, haven't you, now, after having seen these final documents, your own conveyance and your own entry, that you immediately proceeded from the station at Missoula after you left Helena, on the forenoon you got to Missoula, that you went directly to Mr. Cobban's office and conveyed to him as your wife swore to this morning.

Mr. BICKFORD.—We object to the question put to the witness because it is an effort on the part of counsel to cross-examine his own witness; next, because the question is leading, and last because it is irrelevant and immaterial.

A. Well, yes, I think I did, as soon as I saw these records, I did.

Q. You did what?

A. Went and sold this timber to Mr. Cobban.

Q. When?

A. On the same day we got there I suppose, but I think we stayed over night just the same; that is why I

(Testimony of Edward Dodd.)

did not remember for sure whether we had done this the same day or not.

Q. And you were in Mr. Cobban's office with your wife, who else was with you?

A. I do not remember of anyone else.

Q. On the execution and delivery of this deed, how much money did you receive from Mr. Cobban?

Mr. BICKFORD.—We object for the reason that it is irrelevant and immaterial.

A. One hundred dollars, what we sold the claim for, expenses, and this expense money.

Q. A hundred dollars apiece? A. Yes, sir.

Q. Did each of you as a matter of fact receive one hundred dollars?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir, one hundred dollars apiece for the claims we got.

Mr. MAYNARD.—Now, then, I will read into the record the description which is contained in their joint deed.

Mr. BICKFORD.—To all of which we object, for the reason that it has heretofore been offered in evidence and is the best evidence.

Mr. MAYNARD.—I read from the deed itself which has been offered in evidence.

By Mr. BICKFORD.—To all of which we object.

Mr. MAYNARD.—For the purpose of substantiating

(Testimony of Edward Dodd.)

my claim that the description contained in this deed is the exact description of the two pieces of land which were entered by the witness and by his wife.

Mr. BICKFORD.—We object to that for the reason that which the gentleman is about to read is not the same description contained in the bill of complaint herein filed, and therefore is irrelevant and immaterial.

Mr. MAYNARD.—What I say is, it is the exact description of the two pieces of land that are described in the bill of complaint; it is, "the northwest quarter of section 8, and lots 3 and 4, and the east half of the southwest qaurter of section 18, all in township 14 north, of range 13 west of the Montana meridian.

Mr. BICKFORD.—Now, we move to strike out that portion of the description of the deed which is read by the gentleman at this time because the reading of the description at this time does not correspond with the description which he read from the same deed to the witness not to exceed ten minutes ago.

Cross-examination.

(By Mr. BICKFORD.)

Q. You testified a few moments ago, Mr. Dodd, I believe, that you went to the office of Mr. Walsh shortly after the adjournment at the noon recess.

A. Yes, sir.

Q. This is the gentleman to whose office you went. (Indicating Mr. Walsh.)

A. Yes, sir.

(Testimony of Edward Dodd.)

Q. You are one of those who are under indictment for perjury in connection with the land cases, are you?

A. I do not think so, I never appeared from an indictment.

Q. But you were under the impression when you went to Mr. Walsh's office, and you appeared there because he was your attorney in these criminal charges that had been brought? A. I thought so.

Q. In talking with Mr. Walsh in his office concerning this matter he did not ask you to state anything which was not true? A. No, sir.

Q. On the contrary, didn't he impress upon your mind that it was necessary to tell the exact truth?

A. Yes, sir.

Q. With reference to the things you were to testify to upon the witness-stand? A. Yes, sir.

Q. And you have done so?

A. I have done so to the best of my knowledge, I have told the truth.

Q. Now, with reference to going upon this claim and hunting it up, I will ask you to state how long you have lived in the Blackfoot country?

A. Four years; will be five years next fall.

Q. You are pretty well acquainted with the country, lying adjacent to the Blackfoot River, are you?

A. Yes, sir; I guess I am about as well acquainted with it as most folks because I am in the timber the biggest part of the time.

Q. Are you a lumberman yourself?

(Testimony of Edward Dodd.)

A. Yes, sir.

Q. Have you worked in the woods, lumber camps?

A. Yes, sir.

Q. Have you ever had any experience in estimating timber and stone upon land?

A. Yes, sir, I have been with estimators, helped to estimate.

Q. How long have been engaged in that business?

A. Oh, I was raised in the timber, my father was a lumberman.

Q. Then you have been in the lumber regions all your life?

A. Yes, sir, the biggest part; of course, there is some time. I have lived a while on the prairie, but not long at a time.

Q. Would you be able to estimate the value of timber standing upon 160 acres of land?

A. I think I could get something near it; of course, I could not be as good as some would be, but I think I would have a good idea of it.

Q. When you went upon this particular tract of land which you afterwards entered under the Timber and Stone Act of the United States, did you make at that time an estimate of the quantity of timber standing upon this tract of land?

A. Yes, we had that estimated at as near as we could tell what was on it.

Q. You examined it so as to satisfy yourself as to the quantity of timber standing upon it?

(Testimony of Edward Dodd.)

A. Yes, sir.

Q. Did you do the same with reference to your wife's claim? A. Yes, sir.

Q. I will ask you to state if at that time you were satisfied this was a valuable claim for timber purposes?

A. Yes, sir.

Q. Was the land valuable for any purpose excepting timber?

A. No, sir, it was not that I know of.

Q. After having made your examination of the land for the purpose of estimating the amount of timber standing thereon, did you conclude that you would like to have that piece of land? A. Yes, sir.

Q. What steps did you take to get the land?

A. Well, we went and filed on it in the first place.

Q. And subsequent to that time you made your final proofs? A. Yes, sir.

Q. Now, about the time when you made your filing upon the land and the time when you made your final proof, did you make any bargain or agreement to sell the land to anybody? A. No, sir.

Q. At the time when you made your filing in the first instance, had you made any agreement by which you could sell the land? A. No, sir.

Q. Had you made any jromises of any kind by which you were to sell the land?

A. No, sir, I had made no promises.

Q. When was the first time that you made any agreement for the sale of the land—was it after the time

(Testimony of Edward Dodd.)

when you had made your final proofs in the land office here at Helena?

A. Yes, sir, it was after we had made our final proof here, was the first I had made any agreement to sell the land.

Q. Speaking of the witnesses who appeared for you at the time of making final proof, were these witnesses acquainted with this land? A. Yes, sir.

Q. Was that the reason why you selected them as your witnesses? A. Yes, sir.

Q. Were they able to tell what kind of land it was, about how much timber there was upon it?

A. Yes, sir.

Q. They appeared, didn't they, before the officers of the land office? A. Yes, sir.

Q. Do you know whether their testimony was reduced to writing or not? A. I think it was.

Q. And each of you signed the testimony so reduced to writing? A. Yes, sir.

Q. You have already identified your signature upon papers of your final proof? A. Yes, sir.

Q. Among other questions asked you was the following: "Have you sold or assigned your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the government of the United States may inure in whole or in part to any person except yourself," to which you answered, "No, sir, I have not." That answer is correct, is it?

(Testimony of Edward Dodd.)

A. That is right.

Q. The other question next following that is as follows: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person." To which you answered, "Yes, sir." Was that correct?

A. Yes, sir.

Q. As I understand it, Mr. Dodd, you are a citizen of the United States. A. Yes, sir.

Q. Over the age of twenty-one years?

A. Yes, sir.

Q. You had never made a timber and stone entry before this one was made? A. No, sir.

Q. You examined the land before you made the entry? A. Yes, sir.

Q. You discovered no improvements of any kind upon the land? A. No, sir.

Q. You believed at the time you made your entry, at the time you made your final proof, that the land was of that character which could be entered under the Timber and Stone Act? A. Yes, sir.

Q. And that is the reason why you made the entry under the Timber and Stone Act, is it? A. Yes, sir.

Q. What is your occupation now?

A. Lumbering; I have not worked much this winter; I have been doing different kinds of work.

Q. Have you farmed some? A. Oh, yes.

Q. Have a farm now up the Blackfoot?

A. A small place; it is upon surveyed land; that is, it has been surveyed but never was accepted yet by the

(Testimony of Edward Dodd.)

government, I just squatted on this land and have lived there for about four years or over; will be five years next fall.

Q. You are keeping your land then under what we generally denominate squatter's rights?

A. Yes, sir.

Q. You expect to make your final proofs upon it under some of the public land laws of the United States when the land is surveyed, do you? A. Yes, sir.

Q. Under which one of the land laws do you expect to take it when it finally comes into the market?

A. I want to take it as a homestead, prove up on it as a homestead; the land is surveyed now, but not accepted.

Q. The survey has not yet been accepted and it is not yet subject to entry under the land laws?

A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. How large of a piece is this that you squatted on? A. One hundred and sixty acres.

Q. How long have you been on there?

A. It will be five years next fall, I believe next July.

EDWARD DODD.

Subscribed and sworn to before me this fourth day of March, 1902.

HENRY N. BLAKE,
Examiner.

HIRAM DODD, a witness called on behalf of the complainant, and being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. How old a man are you?

A. Seventy, almost; be seventy next month, if I live.

Q. How long have you lived in Montana?

A. Six years in the State.

Q. Where did you live before that?

A. Well, different places, one year in Idaho; three or four years in Washington; in Minnesota twenty-six years before I went to Washington; born in the State of Pennsylvania, raised there.

Q. Where have you lived since you have been in Montana?

A. One year up in the Bitterroot valley, and something over four years on the Blackfoot river, seven miles above Bonner.

Q. Are you living there now? A. Yes, sir.

Q. Have you a claim there? A. No, sir.

Q. No claim?

A. No claim.

Q. Have you never homesteaded any piece in Montana? A. No, sir.

Q. Who are you living with?

A. My son Allen Dodd.

Q. How long have you lived with him?

A. Well, ever since we have been on the Blackfoot river; that is lived on his house and claim.

(Testimony of Hiram Dodd.)

Q. What is his claim, a homesteaded claim?

A. No, it is a squatter's claim before it was surveyed.

Q. Has any other claim been made upon it by your son, now, except this squatter's claim?

A. No, sir; not that I know of.

Q. Have you any property of your own?

A. No, sir; sorry to say it.

Q. You took up a claim under this Stone and Timber Act? A. Yes, sir.

Q. And Mr. Watson, is he your son in law—M. B. Watson?

A. No, sir; he is not my son in law.

Q. What relation is he to you?

A. He is a brother to my son's wife.

Q. Who was that that spoke to you first about it?

A. Well, I believe I heard Marion B. Watson speak about it first.

Q. This is the man I have just called your attention to? A. Yes.

Q. Whereabouts is that?

A. Well, I think it was down at our place; he sometimes went up and down; kept his horses in the stable generally where I live.

Q. How far is his home from your home?

A. Well, it is about thirty miles, I guess; I think it is; maybe it is more; I do not know.

Q. What did Mr. Watson say about this matter?

A. Well, I don't remember that he said much about it, only he said that I could pick out a timber claim, and

(Testimony of Hiram Dodd.)

that I could get a hundred dollars out of it, something to that effect. I won't pretend to say just what was said for I do not remember, but anyway that was my idea, that I could get maybe one hundred dollars out of it, and being as I didn't have one hundred cents, I thought it might do me a little good maybe.

Q. In order to get that what did you do, Mr. Dodd?

A. Well, I went up and found a piece, or my son; he is considerable of a cruiser and he had it cruised out. I went up and looked at it and concluded to take it, filed on it according to law, at least I thought so.

Q. Do you remember the circumstances of your going up to look at that piece?

A. I remember of going up.

Q. Who went with you?

A. My son Harrison, and I believe Winfield, my other son, I think went up at the same time I went. My memory is not very good of late years and I do not want to say anything that is not right, but that is the best of my remembrance.

Q. Do you remember where you went?

A. Yes, sir.

Q. Where did you go?

A. I went up above Clearwater, along the Blackfoot river.

Q. Did you stop at Marion's?

A. Yes, sir; stopped at D. E. Watson's—Doc. Watson, as we call him.

(Testimony of Hiram Dodd.)

Q. You went directly to Doc. Watson's house when you left yours? A. Yes, sir.

Q. You went up by wagon? A. Yes, sir.

Q. How long did it take you to go up there?

A. I think we were gone three or four days, maybe four days.

Q. How long did it take you to go from your house to Doc's? A. We could get up in one day.

Q. Did you go in one day? A. Yes, sir.

Q. You came back in one day? A. Yes, sir.

Q. Were you more than one day out in the mountains looking at the land? A. I was not.

Q. That is all the time you were?

A. I went out one day and looked at this piece of land.

Q. You went up in the mountains to look at this piece?

A. Yes, sir.

Q. Just tell the gentleman there what you did when you went to look at the piece, please?

A. Why, I went and looked over it; I do not know what I would tell him any more than that.

Q. Did you walk to the piece? A. Yes, sir.

Q. Had you ever seen it before?

A. No, sir; nor since.

Q. Where was it, out on the level land or up on the mountain? A. On the mountain; rough, high land.

Q. Were there any settlements around there?

A. Not up there on that side that I could see, I do not think there was.

(Testimony of Hiram Dodd.)

Q. It seemed to be just as the Creator left it, wasn't it? A. I guess it was for all I know.

Q. How long were you up to this piece?

A. Why, went up long enough to go around, over it.

Q. It was away up on the steep mountain side?

A. Why, of course, I went up to my claim.

A. You went up to it. Who pointed out the boundaries? A. My son.

Q. He said, "That is the boundaries of your piece"?

A. He took me around, over it, what I thought the law required.

Q. How long will you say you were up there?

A. Well, we spent a—

Q. How long were you there on this piece?

A. Several hours.

Q. Several hours on the piece that you took up?

A. Yes, sir.

Q. What were you doing there?

A. Looking over it; walking around looking at the timbers.

Q. Who had selected that piece for you?

Mr. BICKFORD.—We object to that as immaterial, it assumes a fact has been proven that has not been proven.

A. My son.

Q. What son? A. Harrison.

Q. You assumed that Harrison had selected it for you?

Mr. BICKFORD.—We object to that as immaterial;

(Testimony of Hiram Dodd.)

it assumes a fact has been proven that has not been proven.

Q. Didn't you hear that Watson had selected it for Harrison?

Mr. BICKFORD.—We object to that as immaterial; it assumes a fact has been proven that has not been proven.

A. He may have some lots; I do not think he selected all the lots, he hunted out some; whether he did this or not I do not know.

Q. He was engaged in that business, wasn't he?

A. He engaged himself in it.

Q. Who was he working for?

Mr. BICKFORD.—We object to that as immaterial and hearsay.

A. I do not know; I guess himself. I do not think he was working for anyone at that time.

Q. Didn't you hear he was working for Mr. Griswold?

Mr. BICKFORD.—We object to that as calling for hearsay testimony and as being irrelevant and immaterial. A. I do not think he was then.

Q. You say that you don't think that Watson was working for Griswold then?

A. Watson; I thought you said my son.

Q. No, Watson?

A. No, sir; I do not know whether he was or not.

Q. State as to whether you did hear that he had been working for Griswold?

(Testimony of Hiram Dodd.)

Mr. BICKFORD.—We object to that as hearsay.

A. I did not hear it at that time.

Q. When did you hear it?

A. Sometime after, away along after, quite awhile, then maybe I did hear so after that time.

Mr. BICKFORD.—We object to that and move to strike it out on the ground that it is hearsay, incompetent and irrelevant.

Q. Well, after you spent this day in looking over this land as you say, did you come here to Helena?

A. Yes; I came to Helena, but not for several days after that time?

Q. Who did you come with?

A. I came with my son Harrison.

Q. Who else? A. His wife and my wife.

Q. What is your wife's name?

A. Matilda.

Q. Where is she?

A. She is to home, living with my son where I live.

Q. She is sick, is she? A. Yes, sir.

Q. That is the reason she did not come?

A. Yes; I believe she is not able to come.

Q. Who else came, if anyone, besides your wife and your son and his wife? A. When I came to file?

Q. Yes.

A. No one, I believe, only us four, came to file; not that I remember of.

Q. Do you know Mr. Griswold?

(Testimony of Hiram Dodd.)

A. Well, hardly; I don't know whether I would know him or not if I would see him. I have seen him, but I don't remember people very well any more; I have no particular acquaintance with him; I have seen him, I guess, a few times.

Q. Do you remember how you came from your home to this city of Helena? A. Yes, sir.

Q. How?

A. With my wagon from Missoula and came by the cars from Missoula here.

Q. If you recall that fact, can't you recall the fact that Mr. Griswold came with you?

A. No, sir; Mr. Griswold did not come with us that I have ever heard anything about.

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. My son Harrison gave me the money to pay the expenses to come over to file.

Q. He came with you, didn't he? A. Yes sir.

Q. Did he give you the money or did he pay the expenses himself? A. He gave me the money.

Q. How much did he give you?

A. I forget; I guess he gave me enough to pay my expenses to come over.

Q. Well, were you with your son and his wife from the time that you left Missoula all the time until you returned back to Missoula?

(Testimony of Hiram Dodd.)

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. Yes, sir.

Q. So that if Mr. Griswold was with them on that occasion, he was with you?

Mr. BICKFORD.—That is objected to as leading.

A. Mr. Griswold was not with us at all that I know of, or that I heard of at all; if he was, I did not hear him.

Q. You say you don't know him?

A. Why, yes; I guess I know him; I would not be certain that I would know him if I saw him today, but I have seen him.

Q. Is that your signature?

A. It looks like it very much; but as near as I could get.

Mr. MAYNARD.—I show witness the original sworn statement which he made before the receiver of the land office at Helena, on the 31st day of July, 1899, and the description of the land contained in this statement is, "The south half of the southeast quarter, the northwest quarter of the southeast quarter, the northeast quarter of the southwest quarter, section 6, township 14 north of range 13 west, in the district of lands subject to sale at Helena, Montana. Stone and timber entry."

Q. Then you came back here again?

A. Yes, sir.

Q. That was on the 19th of October, 1899?

(Testimony of Hiram Dodd.)

A. In October, I think.

Q. Do you remember who you came with then?

A. Yes.

Q. Who?

A. Came with my son and his wife and my wife.

Q. The same son and the same daughter that you have previously referred to in your testimony?

A. Yes, sir, and Marion Watson.

Q. And you made your final proofs under your entry on that day?

A. I do not think on the same day that I came here.

Q. Do you remember what day you came here?

A. I think it was in the night.

Q. And then you went to the land office on the morning of the next day?

A. Yes, I believe that is right.

Q. Then you returned to Missoula on the same day, didn't you?

Mr. BICKFORD.—Objected to as leading.

A. Don't think it, no, sir; no, I think not.

Q. You are not positive on that subject, are you?

A. Let me see; we came in the evening, we stayed two nights here.

Q. You didn't come back to Missoula the same day that you made your final proofs?

A. No, sir, I will say we did not.

Q. Where did you stay?

A. While we were here, do you want to know the hotel we stopped at?

(Testimony of Hiram Dodd.)

Q. Yes.

A. The Cosmopolitan, or whatever you call it.

Q. You stayed there that night?

A. Yes, I believe the first night we came, when we came to prove up we did not stay there, they were full and we stayed at some other place, and then the second night we stayed there.

Q. Who took you to the register and receiver's office when you came here to make your final proofs?

Mr. BICKFORD.—Objected to as leading and also on the grounds that it assumes a fact that is not proven.

A. We just went there ourselves.

Q. Who were the parties; your wife, Harrison and his wife? A. Yes, and Marion Watson.

Q. Was Mr. Griswold in town that day?

A. Not that I know of.

Q. Well, what time did you finish your work at the office?

A. I cannot tell you that.

Q. Who paid the money into the land office to pay for your land?

A. I think Mr. Catlin paid it.

Q. Where did you meet Mr. Catlin before you met him at Missoula, when you were on your way to come up here? A. Yes, I saw him at Missoula.

Q. He came with you?

A. He came, I guess, on the same train.

Q. Did he pay your railroad fare up here?

(Testimony of Hiram Dodd.)

Mr. BICKFORD.—Objected to as leading.

A. Yes, I guess he did.

Q. Who did you say paid the money into the land office? A. I didn't say.

Q. Well, who did? A. I don't know.

Q. Was Mr. Catlin there at the time when you were there to make your final proofs?

A. I don't remember whether he was there or not.

Q. You won't say but what he was?

A. I don't know whether he was in or not, might have been, yes, probably, I guess he was, but I don't remember.

Q. But you guess he was?

Mr. BICKFORD.—We object to that as being a mere supposition on part of counsel on the other side and not a statement of fact.

A. Yes, some of these things it is quite hard for me to remember; that is going on three years; that is some of these trifling things that I never charge my mind with, because I didn't think it amounted to anything anyway.

Q. You knew why Mr. Catlin came with you, didn't you?

A. I didn't know; I had my idea about it.

Q. What was your idea about it?

Mr. BICKFORD.—We object to that because the witness has stated he did not know.

Q. Tell us now what your idea was about it.

(Testimony of Hiram Dodd.)

Mr. BICKFORD.—We object to that on the grounds that it is immaterial and irrelevant, and calls for a conclusion of the witness and not a statement of fact.

A. Do you want to know my idea of why he came?

Q. Yes, sir.

A. I suppose he came probably ready to loan us the money to pay out, to help us out, something of that kind; I don't know that for sure. I didn't know as anybody was going to help us out.

Q. How were you coming up here to Helena to make your final proofs and get your land when you had no money to pay for it?

A. I didn't know but what something would turn up, a fellow might have a little luck; I didn't know anybody was going to pay out when we came here; I had heard talked there were different parties who would do so, that would help pay out and buy out after we had proved up.

Q. Do you swear, now, here on this stand, that when you came from your home from Missoula up here to make your final proofs, to make your payment, that you didn't know where your money was coming from?

A. Yes, sir, I will swear to that.

Q. You had an idea Catlin was coming along to help you out? A. Yes.

Q. Where did you get that idea from?

A. Well, sir, I don't remember. Well, Catlin bought our tickets for us and came along, is about the reason I had that idea.

(Testimony of Hiram Dodd.)

Q. He bought your ticket and came along?

A. Well, he bought the tickets and gave us our tickets there in Missoula.

Q. You knew who he was working for, didn't you?

A. I didn't know, but I had heard that he was working for Mr. Cobban.

Mr. BICKFORD.—We move to strike out the answer of the witness because it is hearsay and because it is irrelevant and immaterial.

Q. You did hear that he was working for Mr. Cobban?

Q. (Continued.) When he came to the station, bought the tickets and gave them to you, you were not surprised, were you?

Mr. BICKFORD.—Objected to as leading, and evidently an intention on part of counsel to cross-examine his own witness.

A. No.

Q. So you did not expect to be surprised if the next day after you came here he paid the money for the purchase of the land?

Mr. BICKFORD.—Objected to as leading and evidently an intention on part of counsel to cross-examine his own witness.

A. I would not have been surprised,

Q. You expected that he would?

A. Yes, I suppose so.

Q. Did he take you to the hotel? A. No, sir.

(Testimony of Hiram Dodd.)

Q. He did not tell you where to go? A. No, sir.

Q. After you landed here, when did you next see him?

A. Why, the next day, I believe.

Q. Where? A. Here in town.

Q. Whereabouts?

A. I could not pick out the place that we were, of course, I was a stranger here.

Q. Had you ever been here before?

A. Only the day we came over to file the application.

Q. This was the second time you had ever been in town? A. Yes, that was the second time.

Q. Are you able to state what time in the day it was that you saw Major Catlin?

A. No, sir, I don't know as I can.

Q. How long was it before you went to the land office that you saw him?

A. Why, it was in the forepart of the day, in the forenoon sometime; that is, saw him that day. I first saw him; I think, I saw him about the land office; I do not remember.

Q. Well, what was he doing at the land office?

A. I did not see him doing anything.

Q. Did you see any money paid in at all for yourself or wife? A. No, sir.

Q. Didn't you see any money paid at all by anybody? A. No.

(Testimony of Hiram Dodd.)

Q. Didn't you see any paid over the counter in the land office on that day? A. No.

Q. After you made your final proof and swore to it, did you get any paper of any kind? A. Yes.

Q. What did you get?

A. I suppose it would be a duplicate for a deed.

Q. I was asking you if you got any paper?

.A Yes.

Q. Did you? A. Yes.

Q. What kind of a paper was it?

A. Why, it was some kind of a paper that gave me title to the land.

Q. Are you sure of that? A. I am certain.

Q. Well, was your wife there with you?

A. Yes, sir.

Q. Who else? A. My son and his wife.

Q. Do you remember where you and your wife went after you left the land office and you had made your final proofs?

A. Why,I don't remember whether we went direct from there to some office, or whether we went back to the hotel first. I do not remember that.

Q. Did you go to some office that day? A. Yes.

Q. In this city?

A. The next day I believe it was.

Q. Wasn't it the same day?

A. I think so.

Q. The same day? A. Yes, I think it was.

(Testimony of Hiram Dodd.)

Q. After you made your final proofs you went to some office in this city? A. Yes, sir.

Q. For what purpose did you go to that office?

A. I believe it was agreed—I think that my son told us to go there, go to some office. I do not remember the office that we went to now, and that is where Mr. Catlin came, anyway.

Q. That is where Mr. Catlin came to that office?

A. Yes.

Q. Did Mr. Catlin come with you to that office?

A. No, I don't think he did.

Q. How did you find the office?

A. I guess he had told my sons where to come, I think so.

Q. Did your son take you there?

A. Yes, I went with him.

Q. And after you got to the office, when you got to the office, was Mr. Catlin there?

A. I don't think he was in; I do not remember, he might have been; I cannot remember these things, but he came there or was there.

Q. He either was there when you got there or he came there after you had gotten there? A. Yes.

Q. What did you do in that office?

A. Well, we sold our claim, right or title to our land.

Q. You deeded your land? A. Yes, sir.

Q. You and your wife joined together in a deed?

A. I do not remember that either.

(Testimony of Hiram Dodd.)

Mr. MAYNARD.—I now show the witness a certified copy of deed which has been offered in evidence in this case, marked "Exhibit 116" and I read so much of the deed as follows:

"This indenture made this 19th day of October, A. D. one thousand and ninety-nine, between Hiram Dodd and Matilda Dodd, husband and wife, of Bonner, Montana, parties of the first part, and R. M. Cobban, of Missoula, Montana, the party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of two thousand dollars ($2,000.00) in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell," etc. "Now, unto the said party of the second part, and to his heirs," etc. "The following described real estate situate in the county of Deer Lodge and State of Montana, to wit: The south half of the southeast quarter and the northwest quarter of the southeast quarter; and the northeast quarter of the southwest quarter of section six, township fourteen north of range 13 west; and the west half of the northeast quarter and the south half of the northwest quarter of section 18, township 14 north of range 13 west."

Mr. BICKFORD.—To all of which we object and move to strike from the record because of the variance in the description read by the gentleman and the description contained in the complaint herein filed, making the evidence offered irrelevant and immaterial; it does not

(Testimony of Hiram Dodd.)

describe or tend to describe any land mentioned in the complaint herein filed.

Mr. MAYNARD.—The acknowledgment of this deed is as follows:

"On this 19th day of October, 1899, before me, Lincoln Working, a notary public in and for said county of Lewis and Clark, State of Montana, personally appeared Hiram Dodd and Matilda Dodd, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

LINCOLN WORKING,
Notary Public in and for Lewis and Clark County, State of Montana."

Mr. MAYNARD.—I desire to make the same answer to Mr. Bickford's objection that I did in the case of the preceding witness, and that is this: That this deed contains a description of two pieces of land, being the two entries which were taken up by the witness on the stand, Mr. Hiram Dodd and named in the bill of complaint and the entry of Matilda Dodd and the description of her entry which is contained in the bill of complaint.

Q. Had you ever seen this man in whose office you were before? A. No, I had never seen him before.

(Testimony of Hiram Dodd.)

Q. How long were you there?

A. I was not there a great while, half an hour or an hour.

Q. What did you do there?

A. I told you once.

Q. You conveyed the land? A. Yes.

Q. Did you then receive the one hundred dollars you said you expected to get? A. Yes.

Q. It was paid to you by whom?

A. Mr. Catlin.

Q. Mr. Catlin paid you one hundred dollars?

A. Yes, sir.

Q. Did you see him pay your wife anything?

A. Yes.

Q. How much did he pay her?

A. One hundred dollars.

Q. That is what you made out of the deal?

A. Yes, and I was glad to get it. If I had been a rich man I would have got the full worth of my timber claim; that is the best I thought I could do with it.

By the EXAMINER.—The following witnesses who have been regularly subpoenaed by the complainant to appear and testify in this hearing, and who are mentioned in the testimony and exhibits filed herein, are excused with the consent of the parties from attendance by reason of physical disability: Elizabeth A. Muchmore, wife of the witness, Alfred E. Muchmore; Matilda Dodd, wife of the witness, Hiram Dodd; and Belle Bryan, the daughter of the witness, Thomas B. Bryan.

(Testimony of Hiram Dodd.)

Whereupon, hearing was adjourned until Tuesday morning, March 4th, at 10:00 o'clock A. M.

Tuesday morning, March 4th, 1902, at ten o'clock.

HIRAM DODD, a witness for complainant, upon resuming the stand was examined by Mr. Bickford as follows:

Cross-examination.

Q. I want to ask you a few questions, Mr. Dodd, about this land matter of yours. Is it—you stated yesterday that your son paid your expenses up here to Helena? A. I said that he gave me money.

Q. Yes. Is that a usual thing for your son to do, give you money? A. No.

Q. How, and in what way did you get this money from your son; as a loan or otherwise?

A. No, I had partly forgot that one circumstance. This money that he gave to me the way I understand it, Mr. Cobban loaned it to us. I was—but he gave me the money.

Q. Your son gave you the money, did he?

A. Yes, I had forgotten that until I gave a little study to it. I had been studying on it ever since I answered that question.

Q. Well, then you got this money as a loan. When did you repay this money, when you had made your final proof? A. Yes, it was considered so, yes, sir.

Q. Now, you picked out as good a claim as you could find, did you, Mr. Dodd?

(Testimony of Hiram Dodd.)

A. Yes, sir. I picked out what I thought a reasonably good claim.

Q. What was your idea of going on the land in the first instance?

A. Why, to look over it and pick out a timber claim.

Q. Well, you wanted to get a claim that contained a quantity of timber? A. Yes.

Q. And you wanted to get a claim that was valuable for the timber—more valuable for the timber that was on it than for agricultural purposes?

A. Yes, sir.

Q. Well, did you pick out such a piece of land as that? A. I did; at least, I thought so.

Q. Now, when you made your final proof in the land office here in Helena, you were sworn in the United States land office, weren't you? A. Yes, sir.

Q. You were sworn before the officers of the land office here? A. Yes, sir.

Q. Who did you say were your witnesses?

A. In making the final proof do you mean?

Q. Yes, in making the final proof.

A. Yes, Marion B. Watson and my son, Harrison Dodd.

Q. Well, when you went before the land office to make this final proof you went there with the idea of telling the exact truth about this land, did you not?

A. Yes, sir.

Q. There at the end of this paper, appears to be your signature, Mr. Dodd. (Counsel hands witness paper

(Testimony of Hiram Dodd.)

which purports to be the papers in the matter of the entry of the witness under the Stone and Timber Act referred to in the pleadings in this cause.)

A. Yes, sir.

Q. You identify that as your signature, do you?

A. Yes, sir.

Q. This paper contains a number of questions with written answers concerning this land, and among other things you testified that you were sixty-seven years old.

A. Sixty-seven?

Q. Yes. A. I never did that.

Q. How old were you at that time?

A. I was—well, let us see.

Q. That was—I guess that was pretty near right, wasn't it?

A. Well, maybe it is sixty-seven—I will be seventy in April.

Q. Well, that is right then?

A. Yes, I thought it sounded about a year back.

Q. Now, in this testimony that you gave before the land office, you say the question is "What is the estimated market value of the timber standing upon this land? Answer. About eight hundred dollars." Now, that was correct, wasn't it?

A. Yes, I believe so, yes.

Q. You had looked at the timber to see what timber there was it, hadn't you? A. Yes.

Q. The following question was asked you: "Have you sold or transferred your claim to this land since

(Testimony of Hiram Dodd.)

making your sworn statement, or have you directly or indirectly made any agreement or contract in any way, or manner with any person whomsoever, by which the title which you may acquire from the government of the United States may inure in whole or part to the benefit of any person except yourself"? To which you answered, "I have not." Was that answer true?

A. Yes, sir.

Q. You see the following question was also propounded to you: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and benefit, and not for the use and benefit of any other person"? To which you answered "I do."

A. Yes, sir.

Q. Was that correct? A. Yes, sir.

Q. This question was also asked you, "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making or in the land, or in the timber thereon?" Answer, "No, sir."

A. Yes, sir.

Q. Was that correct, Mr. Dodd? A. Yes, sir.

Q. At the time when you made this entry, and at the time when you got your final receipt from the land office, there was no contract by which you were to sell this land?

A. Not before I had made this proof.

Q. Had you ever promised anybody to sell them this land? A. No, sir.

(Testimony of Hiram Dodd.)

Q. After you had obtained your final receipt, then you were at liberty to sell the land to whomsoever you pleased?

A. Yes, sir, I thought so and did so. I thought I had the right.

Q. Now, in making this entry of land upon the Blackfoot, you made an examination of the land in person, as I understand it? A. Yes.

Q. Satisfied yourself with reference to the character of the land, and after having done so, made your entry in the land office? A. Yes, sir.

Q. Have you had sufficient experience in making examinations of timber lands and other lands to determine whether land is more valuable for timber than for agricultural purposes?

A. Yes, sir, I ought to be, I have been pretty near all my life in timber and lumber.

Q. Has this land at this time, or had it at the time when you made your final entry, any value whatever as agricultural land? A. No, sir, I think not.

Q. You never had made a timber and stone entry before this one, had you, Mr. Dodd? A. No, sir.

Q. You are a citizen of the United States?

A. Sir?

Q. You are a citizen of the United States, are you, Mr. Dodd? A. Yes, I ought to be.

Q. You were born in this country, as I understand it?

(Testimony of Hiram Dodd.)

A. Yes, born in the State of Pennsylvania and never have been out of the United States.

STIPULATION.

It is hereby stipulated and agreed by and between counsel for the respective parties that the testimony of the witness, Hiram Dodd, need not be read over, corrected and signed by the said witness, but that the Examiner should read over and correct the same and append his certificate thereto to the effect that such testimony had been so read over by him and corrected, and was a correct transcript of the testimony of the said witness, Hiram Dodd.

HENRY N. BLAKE,
Examiner in Chancery.

I certify that the above is a correct transcript of the testimony of the witness, Hiram Dodd.

HENRY N. BLAKE,
Examiner in Chancery.

LAURA A. ROLL, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mrs. Roll, where do you live?

A. At Victor; near Victor. Five miles from Victor.

Q. Are you a married woman? A. Yes, sir.

(Testimony of Laura A. Roll.)

Q. What is your husband's name?

A. Thomas Roll.

Q. Are you any relation to Albert Jemison?

A. Yes, sir.

Q. What relation are you to Albert Jemison?

A. His sister.

Q. Your mother has been sworn here as a witness, has she not? A. I don't know, I heard she had.

Q. And your father?

A. I heard he was, yes, sir.

Q. How long have you lived at Victor?

A. About fourteen years or ever; I couldn't be sure which, I think it was fourteen years last August.

Q. Did you move there with your husband?

A. Yes, sir.

Q. You live on a ranch there, do you?

A. Yes, sir.

Q. Under what entry did you make that, Mrs. Roll?

A. We filed on it.

Q. A homestead entry?

A. Why no, I think it was a filing—not a timber filing under the Timber Act but just a filing.

By Mr. WALSH.—A pre-emption probably.

Q. Since you filed on this land, Mrs. Roll, you have lived there from that time to this? A. Yes, sir.

Q. How many acres have you got there?

A. We have three forty.

Q. Three forty? A. Yes, sir.

(Testimony of Laura A. Roll.)

Q And how many children have you?

A. I have six.

Q. Have you any other—you or your husband any other land besides this that you live on, your three forties that you spoke of. A. No, not now.

Q. Well, did you ever have, except these claims under the Stone and Timber Act?

A. When we lived in Kansas we bought land there.

Q. But after you—have you any means at all besides this land that you have got?

A. Why yes, sir, we have stock and farming implements and cattle and horses.

Q. You are—what you have on the place there in the shape of personal property, horses and stock?

A. Yes, sir.

Q. In the summer of 1899 you took up a claim under the Stone and Timber Act, did you not?

A. Yes, sir.

Q. How far was Albert Jemison living from you at the time, Mrs. Roll?

A. Why, I don't just remember; it is about forty miles from Missoula and about thirty-five or forty miles from where we live to Missoula. That would make it about eighty or ninety miles, somewhere along there.

Q. And your home in Victor is about how many miles from Missoula? A. About forty, I believe.

Q. Forty miles from Missoula?

A. Yes, it is about forty miles to Victor, and I think it is about forty miles from Victor to Missoula.

(Testimony of Laura A. Roll.)

Q. And this land—this entry of yours, was away up in the mountains in the Bitterroot—in the Blackfoot?

A. Yes, sir.

Q. That was some sixty or seventy miles further?

A. Yes, sir.

Q. How far is your home from your mother's?

A. She lives up there on the Blackfoot. It is about eighty-five or ninety miles.

Q. How many of your family live up there in the Bitterroot Valley?

A. Why, I believe there was four of us at that time. My brother and my sister and myself.

Q. What was your brother's name?

A. Abraham Jemison. I am not positive, but I think he lived there at the time, but afterwards he moved to the Blackfoot.

Q. And your other brother, what is his name?

A. Yes, and until my brother Abraham Jemison moved there was four of us altogether.

Q. And how far does your sister, Mrs. Gillman, live from your place there?

A. About a mile or a mile and a half. Of course, I am no real judge of mileage that way.

Q. Mrs. Roll, I show you the—(it don't seem to have been marked, Judge).

By the EXAMINER.—No, those are the land office papers. I have copies of the deeds. They are, of course,

(Testimony of Laura A. Roll.)

in evidence. But these are land office papers and they are not marked.

Q. (Continued.)—I show you the original statement that you made in the land office. Do you recognize this as your signature, Mrs. Roll?

A. Yes, that looks like my writing.

Q. This is dated at the land office at Missoula, Montana, the 31st day of July, 1899, and you make application for the west half of the southeast quarter, and the south half of the southwest quarter of section twenty-six, township fifteen north of range sixteen west, in the district of lands subject to sale at Missoula, Montana.? A. Yes, sir.

Q. Do you remember of the circumstances of your leaving your home and going up into the mountains?

A. Yes, sir.

Q. Who went with you?

A. Mr. and Mrs. Yarger.

Q. Calvin Yarger, do you mean? A. Yes, sir.

Q. Are they living down near where you are now?

A. Where he is, yes, sir.

Q. Where is Mrs. Yarger?

A. She went away on a visit.

Q. Do you know where she is, Mrs. Roll?

A. I heard that she went to California.

Q. Were they any relation to you?

A. No, sir.

Q. Well, you said, Mrs. Roll—will you state, Mrs.

(Testimony of Laura A. Roll.)

Roll, just the facts and circumstances which led you to leave your home and go up into the mountains?

A. Why, I got a letter from my mother telling me that there was timber land up there that could be taken up.

Q. You got the letter? A. Yes, sir.

Q. It was directed to you? A. Yes, sir.

Q. Have you that letter now? A. No, sir.

Q. Do you know where that letter is, Mrs. Roll?

A. No, sir.

Q. Is it lost?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir, I think it is because I never keep any of my letters.

Q. Well, just tell us as near as you can recollect what that letter stated.

By Mr. WALSH.—We object to that for the reason that the letter itself is the best evidence of its contents. No foundation has been laid as yet for the introduction of secondary evidence as to its contents.

A. Why, as near as I can remember she just told me that there was timber land up there to be taken up, and that we had the right to take it up. I had never heard before that women had any right to take up claims. And she wrote that we should come and take one up.

Q. There was nothing said about what you were to do with the land in the letter?

(Testimony of Laura A. Roll.)

By Mr. WALSH.—We object to that as being leading.

A. I don't think there was.

Q. Was there anything said about what you could do with the land in the letter?

By Mr. WALSH.—We object to that as being leading, and as calling for the contents of a letter when it has not been sufficiently shown that the letter cannot be obtained.

Q. Come, Mrs. Roll, please answer my question now.

By Mr. BICKFORD.—Well, give the witness time to collect her thoughts.

By the WITNESS.—Please ask the question again.

(Question read to the witness by the stenographer.)

A. Why, that I could—well, I don't remember exactly what it did state. I don't know positively whether she did write it or whether I heard it. There was rumors around that there would be a mill put up down there in that country.

Q. How much did she say that you could sell it for?

By Mr. WALSH.—We object to that as being leading, and upon the ground that it calls for the contents of a letter when it has not been sufficiently shown that the letter cannot be obtained; and a sufficient foundation has not been laid for the introduction of secondary evidence.

Q. How much could you get for the land, Mrs. Roll?

By Mr. WALSH.—We object to that for the reason that it is assuming a fact as having been proven which

(Testimony of Laura A. Roll.)

has not been proven; namely, that the letter stated what they could get for the land.

A. I don't remember.

Q. You don't remember whether there was anything said about it or not? A. No, sir.

Q. Well, after you got this letter, you went, you say, with Mr. and Mrs. Yarger? A. Yes, sir.

Q. When did your sister go?

A. I think she went before I did.

Q. Did you tell your sister about receiving this letter? A. No, sir, I did not.

Q. Who did, if you know?

A. I don't know.

Q. How did you go up there, Mrs. Roll?

A. Went in a wagon.

Q. All the way? A. Yes, sir.

Q. From your home? A. Yes, sir.

Q. Just three of you?

A. Yes, sir, that is, I went with the crowd and just took my little girl.

Q. Your husband didn't go with you?

A. No, sir.

Q. Had he been there before? A. No, sir.

A. No, sir.

Q. Well, when, afterwards? A. Yes, sir.

Q. Where did you land when you got up into the mountains?

A. We went into camp where there had been a logging camp, and camped in some buildings that there was there.

(Testimony of Laura A. Roll.)

Q. You went directly to that camp? A. Yes, sir.

Q. Who told you to go there?

By Mr. BICKFORD.—We object to that as assuming a fact that has not been proven by any testimony in the record, and further for the reason that it is leading.

Q. Mrs. Roll?

A. I don't remember of anybody telling us; of course, we had to stop and camp somewheres.

Q. You don't know how you happened to go there?

A. I suppose it was close to my mother's; she didn't live far from that camp.

Q. Was your brother Albert there when you got there? A. No, sir.

Q. Did he come there after you were there, while you were there?

A. I don't remember. My father and mother came up in the evening to spend the evening there. He did not come home with me.

Q. How long were you in camp?

A. I couldn't be positive, but I think it was almost a week.

Q. How many were there?

A. Why my sister, Mrs. Dildine and Mr. and Mrs. Yarger was there, and Mr. Eddy was there. That is all I can remember of being there. They were not there all the time.

Q. They were the only ones that were in the camp besides yourself and Mr. and Mrs. Yarger.

A. I think it was. Mr. Eddy wasn't there all the

(Testimony of Laura A. Roll.)

time. I think my sister was there all the time that I was there. After we got to Missoula we went to my sister's, Mrs. Dildine.

Q. Your sister, Mrs. Dildine? A. Yes, sir.

Q. Had Mr. Yarger been up to the mountains before to your knowledge?

A He had some years ago; went through that country. I don't know how long ago, but I remember of his speaking about the place, about being familiar with it.

Q. What does he do for a living, Mrs. Roll?

A. He is a farmer.

Q. In the Bitterroot? A. Yes, sir.

Q. So that you three women and Mr. Yarger went up in to the mountains? A. Yes, sir.

A. You say that you don't know whether you met your brother up there or not during the time that you were gone?

A. Yes, sir, I met him while I was there, but I couldn't be positive whether I met him that evening.

Q. But while you were up in the mountains you did see Albert? A. Yes, sir.

Q. Do you remember the circumstances of your—had you ever been up there before in the mountains?

A. No, sir, I don't think I had.

Q. In your life? A. No, sir.

Q. Have you ever been up there since?

A. Yes, sir.

Q. When?

A. It was last fall, I think, a year ago.

(Testimony of Laura A. Roll.)

Q. Went up to see your mother? A. Yes, sir.

Q. Those are the only two times that you had ever been there?

A. No, sir, I have been up there three times.

Q. When was that?

A. I think it was the fall before that that I was up to see my mother.

Q. Yes, you went up to see this location after you took it up, did you? A. Yes, sir.

Q. Do you remember who you went up with?

A. Yes, sir.

Q. Who did you go up with?

A. Why, my brother located me.

Q. Albert? A. Yes, sir.

Q. Who were in your party that day that Albert located you?

A. I think my father and my mother.

Q. Did Albert locate them the same day?

By Mr. WALSH.—We object to that as leading.

A. No, I don't think he did.

Q. You say Albert located you? A. Yes, sir.

Q. Was there anybody else with you and Albert at the time he located you on this description here?

A. Do you mean when I went onto my claim?

Q. Yes.

A. My husband went with me onto my claim.

Q. When did he come up to camp?

(Testimony of Laura A. Roll.)

A. Why, he came up afterwards, a week or two afterwards. About a week, I should think it was.

Q. He came up about a week afterwards, you think?

A. Yes, sir.

Q. Do you mean to say that he joined you while you were up there? A. No.

Q. Well, what do you mean then?

A. I mean that I went up afterwards.

Q. After your return? A. Yes, sir.

Q. What did you go up the second time for?

A. To go onto my claim.

Q. What did you go up the first time for?

A. Why, I went up to locate my claim.

Q. You went up twice to locate my claim?

A. Yes, sir.

Q. When was it the first or second time that Albert located you?

A. The first time that he located my claim.

Q. You don't mean to say that he located you more than once? A. No, sir.

Q. What did you go the second time for?

A. To go onto my claim.

Q. You didn't go onto it the first time, then?

A. No, sir.

Q. Well, how far was your claim from where your camp was when Albert located you?

A. Well, I couldn't tell positive about that. We drove, it must have been three miles as far as the team could go, and then we walked the rest of the way.

(Testimony of Laura A. Roll.)

Q. You and Albert?

A. No, me and my husband.

Q. You testified that Albert was up with you and that your husband wasn't in the woods at all.

A. No, sir.

Q. Well, what makes you say that your husband was with you? If he wasn't with you why do you say that he was with you?

By Mr. BICKFORD.—We object to counsel cross-examining his own witness in this manner.

A. Well, I couldn't go on the claim at the time I was located and I went afterwards.

Q. Well, now let me understand you; what do you mean by that?

A. I mean that Albert got my claim for me, picked it out, but I couldn't go just then—couldn't walk so far, and then I went and looked at my claim afterwards—went over my claim.

Q. When you went over there as I understand you with Mr. Yarger and his wife, and your sister, your husband was at home? A. Yes, sir.

Q. And Albert took you up and made the selection for you?

By Mr. BICKFORD.—We object to that as being leading.

A. No, sir, he did not take me up then.

Q. But you were not able to go there because you couldn't walk so far, Mrs. Roll?

(Testimony of Laura A. Roll.)

By Mr. BICKFORD.—We object to that as being leading.

A. No, sir.

Q. So as a matter of fact, you didn't go onto your claim at all at that time?

By Mr. BICKFORD.—We object to that as being leading.

A. No, not at that time.

Q. Oh, did you come down from the mountains then after this first visit?

A. After the first visit? Yes.

Q. After going up there with Mr. Yarger and Mrs. Yarger and your sister, did you come back with them?

A. Yes, sir.

Q. Did you go to the land office then?

A. Yes, sir.

Q. Who went with you to the land office?

A. Mrs. Dildine and Mrs. Yarger.

Q. Those two ladies went with you, did they?

A. Yes, sir.

Q. And all of you made your filings? A. Yes.

Q. Was Albert with you at the time?

A. No, not at that time.

Q. Who else went with you, if anybody?

A. Mrs. Jemison, my mother and my brother Albert.

Q. Your mother went with you?

A. Yes, she filed on hers on the same day.

Q. The mother and the two daughters and Mrs. Yarger? A. Yes, sir.

(Testimony of Laura A. Roll.)

Q. Is she any relation to you? A. No, sir.

Q. Was there any man with you?

A. Mr. Yarger was with us but he didn't take any claim up at that time.

Q. Anybody else with you?

A. No, sir, not that I remember of.

Q. Had you ever been to the land office before?

A. No, sir.

Q. What paper did you have when you went to the land office?

By Mr. BICKFORD.—We object to that as being leading; and upon the further ground that it is irrelevant and immaterial.

A. I couldn't say whether I did or whether I did not have any.

Q. Don't remember that? A. No, sir.

Q. Do you remember the fact of Albert giving you a paper with the descriptions of the land on it?

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. You remember that?

A. Yes, a plat or something of the kind.

Q. With the description of your land on it?

By Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. What kind of a paper was it, Mrs. Roll?

By Mr. WALSH.—We object to that because the

(Testimony of Laura A. Roll.)

paper itself is the best evidence of its contents if there is any such paper.

A. I cannot remember that.

Q. Cannot remember the paper at all?

A. No, sir.

Q. Was it as big as this? (Counsel exhibits paper to the witness.)

A. No, I don't think it was. I think it had lots on it just as you would give if you were going into a new country.

Q. With the subdivisions of the land on it?

A. Yes, sir, I think so, something like that.

Q. With the description of the land on it?

By Mr. WALSH.—We object to the question for the reason that it is leading, and further upon the ground that the same question has been asked the witness before and answered by her as well as she is able to answer the question.

A. Yes, sir, numbers.

Q. What did you do with that paper, Mrs. Roll?

A. I don't remember.

Q. Don't you remember what you did with that paper? A. No, sir.

Q. Did either woman in your party have such paper?

By Mr. WALSH.—We object to that question as being leading and as irrelevant and immaterial to the issues in this case.

A. I don't remember.

(Testimony of Laura A. Roll.)

Q. Did you see any paper?

By Mr. WALSH.—We object to that question as being leading and as irrelevant and immaterial to the issues in this case.

A. I don't remember.

Q. Will you swear that they did not have a piece of paper?

By Mr. BICKFORD.—We object to the question for the reason that it is leading and further that the question has already been put to the witness and she has answered it to the best of her ability, and it is an attempt on the part of the counsel to cross-examine his own witness.

A. No, sir, I couldn't swear that they did or did not.

Q. Who did you receive this paper from yourself?

A. Well, I said I couldn't be positive whether I had one or not. I don't remember about that.

Q. Well, you said it described the land?

A. Well, I said I thought I had one.

Q. Well, but do you remember—who do you think you received this paper from, Mrs. Roll?

A. I don't remember.

Q. You don't remember?

A. No, sir, I don't remember.

Q. Albert didn't give it to you, did he?

A. I just said that I couldn't state about that.

Q. Well, you wouldn't state that he did not.

(Testimony of Laura A. Roll.)

By Mr. BICKFORD.—We object to the question as being leading and as an attempt on the part of the counsel to cross-examine his own witness.

A. I wouldn't say that he did or did not.

Q. Neither would you say that Albert gave you this paper, but what you do say is that you gave it to someone in the land office.

By Mr. BICKFORD.—We object to the question as being leading and as an effort upon the part of counsel to cross-examine his own witness.

A. I couldn't say.

Q. And you won't say but what you did?

By Mr. BICKFORD.—We object to the question as being leading and as an effort upon the part of counsel to cross-examine his own witness.

A. No, sir, I couldn't say either way.

Q. Do you know how much land you were to buy?

A. I believe it was a hundred and sixty acres that we were to take up, if I remember right.

Q. How much was the price per acre?

A. I don't remember. I think it was valuable for its timber.

Q. Just the timber on it?

A. Yes, sir.

Q. Did you see Mr. Cobban on this day when you went to the land office?

By Mr. WALSH.—We object to the question as leading.

(Testimony of Laura A. Roll.)

A. No, sir.

Q. Did you see Mr. Catlin?

A. Yes, sir, I saw Mr. Catlin.

Q. You saw him on that day?

By Mr. WALSH.—We object to the question as leading.

A. Yes, sir.

Q. Was he—did he go with you to the land office?

By Mr. WALSH.—We object to the question as leading.

A. I couldn't say positively whether he did or not.

Q. Where did you say you saw him? Where did you see him? A. In the office.

Q. In the land office? A. Yes, sir.

Q. Had you previous to your going to the land office —had you been to any other office?

By Mr. WALSH.—We object to the question as being leading and as immaterial and irrelevant.

A. No, sir. Oh, yes, I went to Mr. Catlin to borrow the money to pay up on my land, to prove up on it, or whatever you call it.

Q. When you made your filing, do you mean?

A. Yes, sir.

Q. Who went with you?

A. Those three ladies that I have mentioned.

Q. Then you came down from the mountain, did you and then went directly to Mr. Catlin's office?

(Testimony of Laura A. Roll.)

By Mr. WALSH.—We object to the question as being leading and as immaterial and irrelevant.

A. Yes, sir.

Q. Mr. Cobban's office.

By Mr. WALSH.—We object to the question as being leading and having no bearing on the issues in this case.

A. Yes, sir.

Q. And from there you went to the land office?

By Mr. WALSH.—We object to the question as being leading and having no bearing on the issues in this case.

A. Yes, sir.

Q. And Major Catlin was there with you?

By Mr. WALSH.—We object to the question as being leading and having no bearing on the issues in this case.

A. I don't remember whether he did or not.

Q. But he was there you said? You saw him in the land office?

By Mr. WALSH.—We object to the question as being leading and having no bearing on the issues in this case.

A. Yes, sir.

Q. Had you ever seen Mr. Catlin before?

A. I don't remember that I had.

Q. Don't remember of seeing Mr. Catlin before.

A. No, sir.

Q. Do you remember of ever seeing Mr. Cobban before? A. No, sir.

Q. What time did you go down to Missoula from the

(Testimony of Laura A. Roll.)

mountains—you and these women that you have spoken of?

A. Why, I don't remember whether it was in the morning or in the evening.

Q. You cannot remember that? A. No, sir.

Q. What house did you go to Mrs. Roll?

A. I went to my sister's house.

Q. And stayed there over night?

A. Yes, sir; I think I did.

Q. And the next morning you went to Mr. Catlin's office, and from there to the land office.

By Mr. WALSH.—We object to the question for the reason that it is leading.

A. Yes, I think so; but I couldn't be positive.

Q. You may state, Mrs. Roll, how it was that you happened to go to Mr. Cobban's office?

A. Why, to get the money to pay up on my land.

Q. Who told you to go there?

By Mr. BICKFORD.—We object to that as being immaterial and irrelevant, and as having no bearing upon the issues in this case.

A. I heard my father say he had proved up on his land, and that was already filed on; he had already filed on his land, or something to that effect.

Q. Was that the only reason that led you to go there?

A. Yes, sir; to borrow the money.

Q. And how many women were there of the party at the time you went to Mr. Cobban's office?

(Testimony of Laura A. Roll.)

A. Four, I believe.

Q. Your mother, your sister, and yourself, and Mrs. Yarger? A. Yes sir.

Q. No man along?

A. Mr. Yarger might have been there.

Q. But you won't say whether he was or was not along? A. Yes, he was there, I believe.

Q. And that was all the men folks that were along?

A. No, I couldn't say positively whether he was in the office or not.

Q. Who did the business at Mr. Cobban's office?

A. I think it was a lame man, Mr. Bond. I don't know just exactly his name, or how you would spell it.

Q. Well, I mean, who did the business for you four women? Who was the spokeswoman of the crowd? Was it you or your sister, or who was it?

A. I think my mother.

Q. You think it was your mother that did the talking, do you? A. Yes, sir.

Q. Were you present when the talking was being done?

A. Most of the time, but I couldn't say all that was said.

Q. Well, what did you hear your mother say, Mrs. Roll?

By Mr. BICKFORD.—We object to that as being hearsay and as irrelevant and immaterial, and further that it is leading.

(Testimony of Laura A. Roll.)

A. I don't know as I could repeat anything that I heard or said.

Q. Did you do any talking there at all yourself?

A. No, sir; only just to get my money.

Q. Did you hear your sister do any talking?

A. No, sir.

Q. Or Mrs. Yarger, did you hear her do any talking?

A. No, sir.

Q. And so that the only woman of the crowd that did the talking was your mother and you cannot now remember anything that was said? A. No, sir.

Q. But you do remember as I understand it that you went from Mr. Cobban's office to the land office?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir.

Q. And what did you do there?

A. I took over the money and paid for my filing.

Q. How much money?

A. I think it was four hundred and eleven dollars—I couldn't be positive about that. It was somewhere near that amount.

Q. Whom did you get the money from?

A. I think it was from this lame man, Mr. Bond. Mr. Catlin done the business but this Mr. Bond handed me the money.

Q. In currency was it? A. Yes, sir.

Q. What business did Mr. Catlin do?

A. I don't know more than he fixed my note that I signed.

(Testimony of Laura A. Roll.)

Q. The first time, then, that you went to the office there, did you meet him the first time, after going up into the mountains? You say that you went to Mr. Cobban's office and got this money?

A. After I came back?

Q. Yes; after you came back the first time?

A. Yes, sir.

Q. And got your money before you made your filing at all?

A. No; we went there to the land office and made our final proof and he demanded the money—the land office man demanded the money, and we went from there to Mr. Cobban's office and got the money, and carried it back to the land office.

Q. And you got four hundred and eleven dollars?

A. Yes, sir. I am not positive, though; it was somewhere close to that, more or less.

Q. Did you see your sister get any money, Mrs. Roll?

A. Yes, sir.

Q. How much did she get?

A. I don't know; of course, I didn't count her money; but I suppose it was just the same amount.

By Mr. BICKFORD.—We now move to strike out the part of the answer of the witness in which she says suppose her sister got the same amount of money as she did.

Q. Then Mrs. Yarger got the same amount of money, too? A. I think she did.

Q. And your mother?

A. I think so; but I don't know.

(Testimony of Laura A. Roll.)

Q. But you are certain you did? A. Yes, sir.

Q. Who did you pay this money to?

A. Mr. Hershey.

Q. You gave it to Mr. Hershey? A. Yes, sir.

Q. And you made your first filing in the month of August? A. Yes, sir.

Q. Well, what did you do then?

By Mr. BICKFORD.—We object to the question for the reason that it is irrelevant and immaterial. ,

A. What did I do then?

Q. Yes; did you go home?

A. I went to my sister's house; but I could say positively what I done. I might have looked around in Missoula and went to the stores. I don't think I did, though; I think I went to my sister's house.

Q. And either that afternoon or the next day you went home? A. Yes, sir.

Q. And Mr. and Mrs. Yarger went home, too?

A. Yes sir.

Q. Anybody else? A. My sister's daughter?

Q. What was her name?

A. Goldy. She went home to spend a couple of weeks.

Q. So that was on the thirty-first day of July, 1899, that you made this filing; so that it must have been the first of August that you went home up to Victor. Now, I show you your testimony that you gave at the time that you proved up, Mrs. Roll? A. Yes.

Q. The testimony of the claimant, Laura Roll?

(Testimony of Laura A. Roll.)

(Counsel hands witness papers, being the papers in her entry under the Timber and Stone Act referred to herein.)

A. Yes, sir.

Q. Is that your signature?

(Counsel refers to the signature of the witness to the papers in the matter of her said entry.)

A. Yes, sir; that is my signature.

Q. From the original testimony of the claimant, it appears that she appeared before Mr. Ranft, the receiver of the land office at Missoula, on the seventh day of October, 1899. At that time she gave testimony in support of her application to purchase the west half of the southeast quarter and the south half of the southwest quarter of section twenty-six, township fifteen, north range sixteen west. Now, then this was—your filing was made on the 31st day of July 1899, and your final proof was made on the following seventh day of October, 1899, so that it would be just simply August and September that elapsed, and a few days. Where were you during these two months and six days in October?

A. I was on my ranch near Victor—five miles southwest of Victor.

Q. What were you doing there?

A. A farmer's wife—cooking and taking care of the house and the children.

Q. Are you able to state that you were home during these months, Mrs. Roll?

A. Yes, sir; any more than I was to some of my neigh-

(Testimony of Laura A. Roll.)

bors. Well, yes; I came back and went back to Blackfoot during that time.

Q. Oh, you did? A. Yes, sir.

Q. You are sure of that?

A. Yes, sir; I was gone, I think, about a week altogether.

Q. Now, let me understand you. You swore positively that on your return to your home, as you have now testified, that you again went up onto the Blackfoot country? A. Yes, sir.

Q. Previous to your making your final proof?

A. Previous to the time I had filed.

Q. No, after you had filed, did you say that you went again up into the Blackfoot county? A. Yes, sir.

Q. Do you swear to that. A. Yes, sir.

Q. Now, let us have no misunderstanding in regard to the matter. You returned home as you swore on the 31st day of July, or the first of August, 1899.

Q. You swore—you appeared before the receiver of the land office on the 7th of October following. Now, between these two dates did you again go away up into the mountains?

By Mr. BICKFORD.—That is the fourth time I think that the witness has answered the question. It has been asked several times before and we object to the question because it is a repetition of the testimony. My objection is that the question has been propounded to the witness on three separate occasions heretofore and has been an-

(Testimony of Laura A. Roll.)

swered by her explicitly and we object to a repetition of the question because it is irrelevant and immaterial.

By Mr. MAYNARD.—Before this witness answers the question I want her to thoroughly and distinctly understand it and that now and any time hereafter can she say she did not understand the question.

Q. Now, I ask you, do you swear now that you went up into the mountains again between those two dates?

A. Well, I think that I did, but I couldn't say positively; I would have to see my husband; maybe he would anderstand just what time it was that we went.

Q. You swear positively that you did and now you cannot say whether you did or not.

A. Well, you said you wanted me to answer.

Q. Yes, I did; and I want your direct answer; but I want you to know whether you did or not.

By Mr. BICKFORD.—We object to the counsel arguing with the witness.

Q. Now, answer the question. Did you or did you not?

A. By the EXAMINER.—Well, give her time to reflect. You put a question and then you change it, and ask her to answer it and so on.

By Mr. MAYNARD.—Certainly I do.

A. Yes, sir.

Q. What did you mean a moment ago when you said you would have to see your husband to find out.

(Testimony of Laura A. Roll.)

A. Why, then he could tell positively whether we went up between those dates or not.

Q. Are you now able to state that you did.

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and is an attempt on the part of the counsel to cross-examine his own witness.

By Mr. BICKFORD.—I think perhaps if your Honor please it might be well for your Honor to say to the witness that she could give her best recollection about the matter as she has heretofore done.

By Mr. WALSH.—She is under no obligation to testify one way or the other if she does not remember about the matter. Counsel insists that the witness shall answer the question positively.

By Mr. MAYNARD.—She has sworn positively that she went up between those days.

By Mr. WALSH.—Yes, she has sworn, too, that she couldn't say positively, and you ask her and want her to swear positively either one way or the other.

A. As near, sir, as I can recollect.

Q. What recollection have you about it, Mrs. Roll?

By Mr. BICKFORD.—We object to that for the reason that the witness has already given her best recollection about the matter and is not called upon to again repeat it.

(Testimony of Laura A. Roll.)

By the EXAMINER.—You may answer the question.

By the EXAMINER.—You may answer the question.

A. Why, I went up there and I think it was between those dates. Went in the wagon again. But it is almost three years ago.

Q. Well, now give us all the information that you have on the subject.

By Mr. WALSH.—I object now to any further examination of this witness upon this line. I don't see any sense in it; and I don't see what counsel expects to get by this manner of examination.

Q. Mrs. Roll, if there is anything you know about the matter state it.

By the EXAMINER.—Yes; if there is anything you know about the matter that you have not already testified to here you can say so.

A. I went to go upon my claim.

Q. Who did you go with?

A. I went with my husband.

Q. Who else did you go with?

Q. My father and mother went part ways as far as the wagon could go, but I myself went on the claim.

Q. Where did you leave your father and mother?

A. Why, I left my father at camp and my mother went on her claim as far as her claim went and then we went on.

Q. And then you and your husband went where?

A. Yes, sir; we went on.

(Testimony of Laura A. Roll.)

Q. Who did you see up there?

A. Didn't see anybody there.

Q. All the time that you were gone you saw nobody?

A. After I left my mother; no, sir.

Q. And where did you go after you returned from the mountain? A. Went back to my mother's.

Q. Then where did you go?

A. Then I went home to the Bitterroot.

Q. You mean back to Victor?

A. Yes, that is in the Bitterroot, Victor is.

Q. Your husband hadn't been up there before, had he? A. Yes, sir.

Q. When did he go?

A. I couldn't tell you just when it was, some time before that.

Q. How far was your location from where you lived--your father and mother?

A. Well, I couldn't tell exactly about that. Must have walked somewheres between two and three miles more or less.

Q. You and your husband? A. Yes, sir.

Q. And anybody else? A. No, sir.

Q. And you had never been on to that land before in your life, had you? A. No, sir.

Q. You didn't go there at the time that Albert located the claim for you, did you? A. No, sir.

Q. Well, how could you find it then?

A. My husband had been all over the land there with Mr. Jemison?

(Testimony of Laura A. Roll.)

Q. When? A. Before that.

Q. When?

A. I don't know just when, but before that when he took up his claim.

Q. Had he been all over that country?

A. Yes, sir.

Q. Well, you say your husband—well, how was your husband able to locate you on a piece of land that you had never been on before?

A. Well, I think Mr. Jemison gave him the numbers and the dimensions of the land and told him where it laid.

Q. You think he did?

A. Yes, sir, because he took me there and showed me and told me that was my claim.

Q. How long did you stay there?

A. We just walked over it, didn't stay at all any more than to look around.

Q. Was it on the mountain side? A. Yes, sir.

Q. How long were you up there?

A. We must have been gone two or three hours, more or less, from the time we left the wagon when we had drove as far as we could with the wagon.

Q. This two or three hours was the only time then that you were ever there in your life?

A. Yes, sir.

Q. And that two or three hours you had spent in going from the wagon to your claim and back again?

A. From the wagon up, yes, sir.

(Testimony of Laura A. Roll.)

Q. And it was how many miles, did you say?

A From where?

Q. From the wagon, between the wagon and the claim?

A. I think between two or three, more or less.

Q. You walked from two to three miles and walked back again two or three miles and the whole business took you two or three hours?

A. I think it did; I am not positive. We had no timepiece with us.

Q. Well, at any time—when did you see Mr. Griswold?

A. I never saw Mr. Griswold until we proved up.

Q. Never saw Mr. Griswold until you proved up?

A. Yes, I saw him, but never to talk with him.

Q. But you did see him on the day you proved up?

A. Yes, sir.

Q. Was he one of your witnesses?

A. Yes, sir.

Q. How did he come to be a witness for you when you had never seen him before until that very day?

A. Well, I couldn't tell you, he was down on the papers, you know, and he came there to prove up.

Q. Down on what papers?

A. Down on my filing papers.

Q. How do you know that?

A. I think we gave him his name.

Q. You think that you gave him his name as a witness? A. Yes, sir.

(Testimony of Laura A. Roll.)

Q. On the filing papers? A. Yes, sir.

Q. Who told you to give him his name?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and assumes that somebody had told the witness to give in the name of Mr. Griswold as a witness.

A. I don't know who told me.

Q. You don't know how you happened to give in his name as a witness?

A. Why, I think we talked it over, us women there. There had to be four witnesses down and then it took two to prove up. He was locating timber claims there at that time. I think he estimated the timber. He was an estimator anyway. I think that is the way he came to be put on as a witness. That is, he estimated the timber.

Q. Who told you that he estimated the timber?

By Mr. BICKFORD.—We object to that as assuming that he estimated the timber.

A. I heard my mother say that he was an estimator.

Q. Who told you that he had estimated your timber on your piece of land?

By Mr. BICKFORD.—We object to the question for the reason that it is irrelevant and immaterial and upon the further ground that it assumes that Mr. Griswold estimated the timber on the claim of the witness when it does not so appear by the testimony.

Q. Your brother Albert?

(Testimony of Laura A. Roll.)

A. Yes, sir. I couldn't be positive about that, though.

Q. You handed in the names of your witnesses at the time you made your filing, didn't you?

A. Yes, sir.

Q. And were they in writing?

A. I don't remember.

Q. You don't remember?

A. No, I don't remember.

Q. Do you remember—

A. I don't know positively, but I think my brother attended to that.

Q. Albert?

A. Yes, I am not positive though about it.

Q. You think that Albert attended to these matters? A. I think so.

Q. Do you remember who the other witnesses were?

A. No, sir, I do not. You mean at the land office?

Q. You mean at the land office? Yes, I mean at the land office when you made your final proofs?

A. Mr. Griswold and Albert Jemison.

Q. Chauncey L. Griswold and your brother Albert were your witnesses? A. Yes, sir.

Q. Who else proved up on that same day?

A. Mrs. Dildine, Mrs. Jemison and Mrs. Yarger.

Q. And Mr. Griswold and Albert were their witnesses, too? A. Yes, sir.

Q. Who was with you at the land office? Was your husband with you too?

(Testimony of Laura A. Roll.)

A. The day that I proved up?

Q. Yes, the day that you proved up?

A. I don't remember whether he was or not the day that I proved up. He was there in Missoula with me at the time.

Q. He was there in Missoula?

A. Yes, he was in Missoula with me.

Q. Had he proved up on his claim?

A. No, sir, I think I proved up before he did.

Q. You think you did? A. Yes, sir.

Q. Where did you go after you proved up and gave your testimony there, Mr. Griswold, and your brother Albert testifying for you?

A. I don't remember. I went up to my sister's for dinner, Mrs. Dildine.

Q. Did you go to Mr. Cobban's office that same day?

A. I couldn't positively say whether I went that same day or not.

Q. Do you remember of going there shortly afterwards? A. Yes, sir.

Q. What did you do in Mr. Cobban's office after you proved up when you went there?

A. Why, I went to see if I could sell my timber claim.

Q. Did you sell it to him? A. Yes, sir.

Q. Sold it to him on the— You might have sold it to him on the same day that you made your final proof?

By Mr. WALSH.—We object to that as being leading and irrelevant and immaterial.

A. I am not positive about that.

(Testimony of Laura A. Roll.)

Q. You won't say but what you did?

By Mr. WALSH.—We object to that upon the ground that it is leading and irrelevant and immaterial and an attempt on the part of the counsel to cross-examine his own witness.

Q. You understand the question, do you, Mrs. Roll?

A. Yes. I don't think it was the same day.

Q. Well, when do you think it was?

A. Well, I don't know positively, but I think it must have been a week or two later.

Q. What makes you think so?

A. Think so?

Q. Yes, what makes you think it was a week or so later? A. Because I had to sign my deed.

Q. Is that the only reason?

A. Yes, sir. I don't remember.

Q. Did you think it would take a week to sign your deed? A. No, sir.

Q. I asked you whether you thought it was a week after you proved up before you conveyed your claim to Mr. Cobban. Now, I ask you why you think it is a week and I want you to answer to that.

A. I said because I had to sign my deed.

Q. You had to sign the deed?

A. Yes, when you sell you have to sign the deed.

Q. And you think it was a week or so?

A. Yes, it may have been two weeks. I am not positive about that.

(Testimony of Laura A. Roll.)

Q. Do you remember whether you went back to your home in Victor before you sold to Mr. Cobban?

A. Yes, sir, I think that I did.

Q. You think that you went back home?

A. Yes, sir.

Q. Then, if you went back home you again made a trip to Missoula for the purpose of conveying the claim to Mr. Cobban? A. No, sir.

Q. Well, where did you sign your deed?

A. I think I signed it up there at Victor. I am not positive about it though.

Q. You are not positive about that? A. No.

Q. Well, what makes you say you think that you signed it at Victor?

A. Because I think my deed came from the land office there to Victor to me. No, I didn't, I took my deed and went back again to Missoula.

Q. Oh, you took your deed and went back to Missoula? A. Yes, sir.

Q. Where did you get your deed from?

A. It came from the land office.

Q. How?

A. Well, not exactly a deed, a receipt of the deed. It came by mail.

Q. Now, you say it wasn't the deed that came?

A. Well, it was something to the same effect. It may have been the deed or the receipt of the deed. I couldn't say positively which. It may have been a deed that came to me by mail.

(Testimony of Laura A. Roll.)

Q. From Missoula?

A. I know positive—I don't know positively whether it was from Missoula or the land office.

Q. Well, the land office was in Missoula, wasn't it?

A. Yes.

Q. Well, let us have no misunderstanding in regard to this matter, Mrs. Roll. You have a recollection of making the final proof in the case?

A. Yes.

Q. And giving your testimony and Mr. Griswold being there as one of the witnesses and Albert Jemison, your brother as another? A. Yes.

Q. You remember that—in the land office?

A. Yes.

Q. Now, I am asking in regard to—then you afterwards say that you deeded your land to Mr. Cobban. That is right, isn't it? A. After it was mine?

Q. Yes, after it was yours? A. Yes, sir.

Q. Now, I am asking you your recollection as to when you so sold your claim to Mr. Cobban?

A. I said I wasn't positive.

By Mr. WALSH.—She has answered that before.

Q. That it was two or three weeks after?

A. Yes, you can find that out by looking at the deed, find out the exact date.

Q. Your recollection of it is that it was a week or two weeks afterwards that the deed or something came to your home in a letter; is that your recollection about it?

(Testimony of Laura A. Roll.)

By Mr. WALSH.—We object to the question for the reason that it is leading and upon the further ground that it is irrelevant and immaterial.

A. I think it was some papers—there was some papars, I couldn't remember whether it was the receipt for some money that I paid into the land office or not, or whether it was the deed. I took the papers and went right down to Mr. Cobban.

Q. You remember of receiving some papers, don't you? A. Yes, sir.

Q. And going back to Mr. Cobban's office?

A. Yes.

Q. Before you sold you claim to him?

A. Yes, sir.

Q. Oh, it was—just what that paper was you don't know?

A. No, sir. Of course, I knew it was something connected with my land.

Q. Who went with you when you received this paper at Mr. Cobban's office? A. My husband, I think.

Q. And then you sold to Mr. Cobban?

A. Yes, sir, after I made my—got my deed.

Q. Now, do you remember how many deeds you and your husband made?

A. No, I don't; I think, though, that he had to sign a deed with mine. Of course, when the husband sells anything why the wives always has to sign it, too.

Q. Did he sign with yours?

A. I don't remember whether he did or not.

(Testimony of Laura A. Roll.)

Q. You don't remember that? A. No, sir.

Q. Now, Mrs. Roll, it appears that you made your final proof on the 7th of October? A. Yes, sir.

Q. 1899, on the 7th day of October, 1899?

A. Yes, sir.

Q. And it appears from the certified copy of the deed which you made to Mr. Cobban that you made it on the same day?

By the STENOGRAPHER.—What was the answer, you, to that question, I did not hear it.

By the WITNESS.—I said I told him that I wasn't positive.

Q. Well, then, how did you come to say that you returned to your home and got this paper through the postoffice and then went back to Missoula and conveyed your claim to Mr. Cobban?

A. I said I wasn't positive. That there was some papers come to me and I took them and went back. I told you I didn't know whether it was a receipt for my money or the deed or what it is; that I had forgotten.

Q. Well, then, this deed shows that on this very day that you proved up you sold to Mr. Cobban.

By Mr. WALSH.—Well, we object to the counsel stating to the witness what the paper shows. The paper itself being the best evidence of that fact.

Q. Now, have you any recollection of the transaction, of your going to Mr. Cobban's office at all?

A. I couldn't be positive. Of course, the paper shows

(Testimony of Laura A. Roll.)

there what I did, but I had forgotten whether I went there that day or later on.

Q. Well, do you recollect as to whether or not you did deed to Mr. Cobban or as to whether you got any money from him? A. Yes, sir.

Q. How much did you get from him, Mrs. Roll?

A. I believe it was a hundred and ten dollars.

Q. A hundred and ten dollars, you think?

A. Yes.

Q. That is what he paid you for your deed, is it?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir.

Cross-examination.

(By Mr. WALSH.)

Q. Mrs. Roll, has your husband ever thought of taking up any timber claims before this time that you went up into the Blackfoot country?

A. Well, I don't remember of ever saying that I had a right until then.

Q. Well, now, what is your property up there in the Bitterroot worth? What is the place worth?

A. The place, I think, is valued at about three thousand dollars.

Q. Besides your stock and stuff? A. Yes, sir.

Q. Are you extensively in debt? A. No, sir.

Q. Now, at the time you took up this timber claim what amount of ready cash, if any, did you have?

(Testimony of Laura A. Roll.)

A. I don't know how much he did have, I don't remember.

Q. You don't know whether your husband at that time had any ready money or not? A. No, sir.

Q. Well, when you went up the Blackfoot country you had a letter from your mother in which she said, I believe, that if you did take up a timber claim you would probably have an opportunity to dispose of it?

A. Yes, sir.

Q. Do you remember if anything was said in that letter as to whom you might be able to dispose of the claim to?

A. No, sir, she never said who would buy it.

Q. But in the letter you understood that somebody was going to put up a mill on the Blackfoot river?

A. Yes, sir, that was rumored all over.

Q. Well, you—how did it come about, Mrs. Roll, that you borrowed money with which to make proof upon your land from Mr. Cobban?

A. Well, my father had borrowed money from Mr. Cobban.

Q. And you went there for the purpose of seeing whether you could borrow money to make proof on your land? A. Yes, sir.

Q. And did you make arrangements to do that?

A. Yes, sir.

Q. Well, now, could you have borrowed the money in any other day if you had tried?

(Testimony of Laura A. Roll.)

A. I suppose we could.

Q. On your place? A. Yes, sir.

Q. Why didn't you borrow the money on your place for the purpose of paying for this?

A. Well, because we didn't want to mortgage our home.

Q. You preferred to borrow it in this way?

A. Yes, sir.

Q. Well, at the time you borrowed the money did you get any memorandum?

A. I signed a paper of that; it was my note.

Q. And that was surrendered up to you, I suppose, when you finally sold the land, Mrs. Roll.

A. Yes, sir.

Q. Now, what was—how did it come about that you sold this land eventually to Mr. Cobban and not to someone also after you had got your title to it?

A. Well, we heard that Mr. Cobban was buying timber. That is what I heard.

Q. That you could borrow money from him?

A. Yes, that we could borrow money from him and go to him and sell my claim.

Q. Well, now, had you ascertained whether anybody in that vicinity was buying timber at that time—timber lands beside Mr. Cobban?

A. I did not, but my sister did.

Q. What do you mean by that? What did your sister do?

(Testimony of Laura A. Roll.)

A. She went to see if she could sell her claim to different parties.

Q. Did you have any information from her as to the chance of selling your claim?

A. She said she couldn't do any better there so that we would just as well sell to Mr. Cobban.

Q. You were advised by your sister that she had made inquiry about the matter? A. Yes, sir.

Q. And after she couldn't do any better there and found out that she couldn't do any better than by selling to Mr. Cobban? She said that did she?

A. Yes, sir.

Q. And so you sold to Mr. Cobban? A. Yes, sir.

Q. What arrangements did you have with Mr. Cobban prior to the time you made your final proofs?

A. I didn't see Mr. Cobban. It was his agent there.

Q. Well, what arrangements did you have with Mr. Catlin to the effect that you would convey the land to Mr. Cobban after you did make your final proof?

A. I had no arrangements at all.

Q. What bargain did you make of any kind with anyone when you made your final proof that you would convey the land?

A. I made no promise at all.

Q. So far as any promise or agreement was concerned evidently then, Mrs. Roll, you were at liberty to sell to Mr. Cobban or to anyone else that you saw fit.

A. Yes, sir.

Q. Now, Mrs. Roll, do you recognize this as your

(Testimony of Laura A. Roll.)

signature (counsel hands witness papers in the matter of her entry under the Stone and Timber Act involved in this case).

A. Yes, that looks like my signature.

Q. I show you testimony that you gave upon your final proof, Mrs. Roll, in the matter of your entry?

A. Yes, sir.

Q. Now, in the course of this testimony you are asked in this connection this question: Are you acquainted with the man above-described by personal inspection of each of its smallest legal subdivisions to which you answered, yes, sir. Then the question is asked you when and in what manner was such inspection made, and you answered, "such inspection was made on October 3d, 1899, by walking over it." Now, after seeing this testimony here, what is your opinion as to whether you were or were not on the land between the time that you made your filing, August 31st, 1899, and the time that you made your final proof on October 7th, 1899. What is your recollection about it?

A. Well, I went up there between that time.

Q. Also in the course of this testimony you are asked this question, Mrs. Roll. "Have you sold or transferred your claim to this land since making your sworn statement or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except

(Testimony of Laura A. Roll.)

yourself." To which question you answered, "no, sir."

A. Yes, sir.

Q. Now, was that true, Mrs. Roll? A. Yes, sir.

Q. Then you were asked this question: Question 14: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use of benefit of any other person." To which you answered, "yes, sir, and I purchased said land with my own individual money." A. Yes, sir.

Q. Was that answer correct, Mrs. Roll?

A. Yes, sir.

Q. And again you are asked question fifteen as follows: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" To which you answered, "No, sir."

A. Yes, sir.

Q. Was that true? A. Yes, sir.

Q. Now, when did you first see Mr. Catlin with reference to the making of this entry, Mrs. Roll?

A. After I came back from the land.

Q. Was that before you made your filing in the land office or after you made your filing in the land office?

A. Before.

Q. Did Mr. Catlin draw up your sworn statement, or was that drawn up in the land office after you got there?

A. Why, I don't remember.

Q. Cannot say as to that? A. No, sir.

(Testimony of Laura A. Roll.)

Q. Do you know what business Mr. Catlin was in, Mrs. Roll?

A. Why, I think he was at the office, at Mr. Cobban's office.

Q. At Mr. Cobban's office? A. Yes, sir.

Q. What did you understand was the character of the business that he was engaged in?

A. Loaning money.

Q. And did you understand that he was doing any business in the land office, or in the nature of a land attorney? A. No, sir.

Q. You don't know as to that?

A. No, sir, I do not know anything about that.

Q. You understood his business was loaning money on real estate, did you, Mrs. Roll? A. Yes, sir.

Q. Well, what was the nature of the talk that you had with Mr. Catlin about this matter, when you went in to see him?

A. Why, I think my mother done that business; I don't think I talked at all with Mr. Catlin.

Q. Your mother acted as spokeswoman for all of you? A. Yes, sir.

Q. All the time you were there? A. Yes, sir.

Q. Mr. Catlin agreed as I understand you to let you have the money to make the proof? A. Yes, sir.

Q. Now, when you came back again for the purpose of making the final proof, as I understood you, you went to Mr. Catlin and borrowed the money from him?

A. Yes, sir.

(Testimony of Laura A. Roll.)

Q. You took the money yourself to the land office?

A. Yes, sir.

Q. And you said you paid the money to Mr. Hershey?

A. Yes, sir.

Q. Do you know Mr. Hershey when you see him?

A. Well, I couldn't swear to him; that is what I understood. It was Mr. Hershey he was a large, fleshy man.

Q. Do you recognize him here in the courtroom?

A. Why, I don't see him.

Q. This gentleman over there (pointing to Mr. Hershey)? A. No, that isn't the man.

Q. Well, that is Mr. Hershey. A. Oh, it is.

Q. Yes, sir, the gentleman you paid the money to?

A. As I understood it was Mr. Hershey. Wasn't he the land agent there?

Q. He was the register at that time? A. He was.

Q. But if I told you that Mr. Hershey was in the east at that time you wouldn't undertake to say that it was Mr. Hershey would you?

A. Why no, but to the best of my knowledge it was Mr. Hershey.

Q. But you don't recognize him as the man you paid the money to do you?

A. Him as the man I paid the money to?

Q. You think Mrs. Roll that some paper came from the land office to your home in the Bitterroot?

A. Yes, sir.

Q. Now, I will show you the duplicate receiver's re-

(Testimony of Laura A. Roll.)

ceipt attached to your final proof papers and ask you if the paper that came to your house was something like that.

A. I believe it looked something like that. I couldn't be positive. It was in a large envelope.

Q. This appears to be something of the same nature as the paper that came to your house, does it?

A. Yes, as near as I remember.

Q. Now, Mrs. Roll, I show you the deed of your husband's lands or a certified copy of the deed of your husband's land made on the 27th day of October, and signed by yourself and by your husband, Thos Roll, and made in Missoula on the 27th day of October. If your proof was made n the 7th that would be twenty days, or about three weeks after you made your proof. Do you remember being Missoula with your husband at the time this deed was made? A. Yes, sir.

Q. Now, your own deed, Mrs. Roll, bears date the 7th day of October, 1899, the same day that you made your final proof. A. Yes, sir.

Q. Now, it appears that you were in Missoula on the 27th day of October with your husband and sold the land to Mr. Cobban? A. Yes, sir.

Q. Now, do you remember whether you sold your land to Mr. Cobban on the same day that your husband did or whether you had sold it and got your money for it? A. No, I think I had sold mine before.

(Testimony of Laura A. Roll.)

Redirect Examination.

Q. Mrs. Roll, you said to my brother Walsh here that you got your money from Mr. Catlin.

A. Either from Mr. Catlin or from Mr. Cobban. There was a lame man there by the name of Bond, I think.

Q. When did you say to him that you did get it?

A. Sir?

Q. When did you say to Mr. Walsh that you did get this money.

A. On the day that I filed to prove up.

Q. You are sure of that?

A. The date that I filed, yes, sir, I got the money to prove up—to pay up, or whatever you call it under the timber act the day that I filed as near as I can remember.

Q. And paid it into the land office the same day?

A. Yes, sir, I supposed the man was Mr. Hershey, but it wasn't it seems; that gentleman there. He was a large, fleshy man.

Q. And you paid the money yourself?

A. Yes, sir.

Q. Now, are you sure of that?

A. Yes, sir, I am sure of that.

Q. It wasn't on the date that you made your final proofs? A. The final proofs.

Q. The day that you filed.

A. Well, I don't understand you.

(Testimony of Laura A. Roll.)

By Mr. WALSH.—You are just simply confusing the witness by the use of the terms. If you would just explain to the witness she would understand.

By the EXAMINER.—Do you know what is meant by final proofs?

A. Yes, when you deed anything over to the land office and pay up on it.

By Mr. BICKFORD.—With the Court's permission may I explain to the witness?

By the EXAMINER.—No, let Mr. Maynard explain it.

Q. What I want to know is when you got this money.

A. When I went to the land office and filed. I went there and filed and then I went and got my money to pay it, I supposed, to Mr. Hershey. It was the man there that done the business at the land office.

Q. Got the money the first day that you went to the land office? A. Oh, I ain't positive about that.

Q. That is what I am asking you about, as to when—

A. The day I filed on my land.

Q. What you mean by the day that you filed on your land?

A. Well, it was the day I went there to do my business, at the land office.

Q. Well, what day was that?

A. Well, you can tell by looking at those papers. I don't remember the day and date.

Q. Well, you remember don't you that you had to go twice you went first to file your statement—you did

(Testimony of Laura A. Roll.)

your filing on the 31st day of July and then on the 7th day of October you went back to make your final proofs. Don't you remember that? A. Oh, Yes.

Q. Well which of these dates was it?

A. Well, it was the last day, I think. I wouldn't be positive. I think it was the last day. We filed on it and then we had to pay up on it.

Q. That is what I am asking you about you know.

A. Yes, but I don't remember.

Q. You don't remember.

A. No, I don't remember whether it was the first time or the last time.

Q. Then as I understand you, you don't remember whether you got your money from Mr. Catlin or not.

A. Yes, I remember, but I don't remember the date it was.

Q. You don't remember whether it was on the 31st day of July or on the 7th of October? A. No, sir.

Q. But as I understand you, you got it from Mr. Catlin and immediately paid it into the land office.

A. Yes, sir.

Recross-examination.

(By Mr. WALSH.)

Q. Mrs. Roll, I show you your sworn statement in connection with your final proofs in this matter.

A. Yes, sir.

Q. It is dated July 31st, 1899, land office at Missoula, Montana, July 31st, 1899. That is your signature, is

(Testimony of Laura A. Roll.)

it not Mrs. Roll? (Counsel hands witness paper referred to and refers to her signature thereon.)

A. Yes, sir, I think it is.

Q. Now, this is when your filing was made. Your filing was made on the 31st of July, 1899. Now, your notice was advertised in the newspaper for nearly sixty days or about sixty days? A. Yes, sir.

Q. And then you came to the land office at the end of that time with two witnesses did you not, to make your final proof? A. Yes, sir.

Q. Now, that was on the 7th day of October, 1899, some two months afterwards wasn't it?

A. Yes, sir.

Q. The time that you and your witnesses were at the land office? A. Yes.

Q. Now, that your attention is called to these two times of your being at the land office, July 31st, 1899, and when you made your final proof, October 7th, 1899. Can you tell us when this was now that you paid the money into the land office?

A. Why I am not positive, but I think it was October 7th.

Q. Now, Mrs. Roll, you paid the money as I understand you to quite a round, fat man? A. Yes, sir.

Q. Was there any other gentleman at the office at that time?

A. Yes, there was two or three around there, but I didn't pay any attention to them.

Q. Well, who asked you the questions that are found here in the proof that you made?

(Testimony of Laura A. Roll.)

A. Why I think it was this here fleshy man.

Q. This same man? A. Yes, sir.

Q. Now, was there any other gentleman there too that asked you any questions concerning this land?

A. I don't remember of any.

That is all.

LAURA A. ROLL.

Subscribed and sworn to before me this fifth day of March, 1892.

HENRY N. BLAKE,
Examiner in Chancery.

At this point a recess was taken until two o'clock of the same day.

Tuesday, March 4th, 1902, 2:00 P. M.

Hearing resumed.

LAVINA I. GILMAN, a witness on behalf of the complainant being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your name, please?

A. Lavinia I. Gilman.

Q. When did you come to Helena?

A. Come to Helena?

Q. This time, yes? A. Yesterday.

Q. What time did you get here?

A. Well, I don't know, it was in the afternoon sometime.

Q. Who did you come with?

(Testimony of Lavina I. Gilman.)

A. I came with my husband.

Q. What is his name?

A. His name is Joshua C. Gilman.

Q. Were you in the room this morning?

A. Yes, sir.

Q. Did you hear the testimony of Mrs. Roll?

A. No, sir, I could not hear it; my baby made so much fuss, I went out.

Q. Is she a relation of yours?

A. Yes, sir, she is my sister.

Q. You spent some time in Mr. Walsh's office since you have been in town? A. Whose office?

Q. Mr. Walsh's office, here (indicating).

A. I think I was; to be sure.

Q. When?

A. Last evening, I think I went up there a few minutes after supper; no, sir, it was before supper.

Q. How many were present with you?

A. Just me and Mr. Gilman.

Q. Your husband? A. Yes, sir.

Q. Where do you live, Mrs. Gilman?

A. I live at Victor, in the Bitterroot.

Q. How far from your sisters?

A. About a mile and a half—two miles.

Q. How long have you lived there?

A. Fifteen years.

Q. Do you live on a ranch? A. Yes, sir.

Q. How large is the ranch?

A. It is 160.

Q. Homesteaded?

(Testimony of Lavina I. Gilman.)

A. No, sir, I think it is pre-empted.

Q. Have you lived on this place all the time?

A. Yes, sir.

Q. With your family? A. Yes, sir.

Q. How many children have you?

A. I have eight living.

Q. You are older than Mrs. Roll? A. Yes, sir.

Q. Do you remember the circumstances of your leaving your ranch up in Victor and going up into the mountains to make a location under the Stone and Timber Act? A. Yes, sir.

Q. When did you go?

A. I cannot remember dates at all; my filing paper will tell you the date, but I could not.

Q. Don't know when you went? A. No, sir.

Q. Do you know who you went with?

A. Yes, sir.

Q. Who did you go with?

A. My husband, my brother and my brother's wife.

Q. What brother?

A. George P. Jameison.

Q. And his wife? A. Yes, sir.

Q. How did you happen to go Mrs. Gilman?

A. Well, my husband went and I went with him.

Q. Is that the only reason that you went?

A. Yes, I think it is.

Q. You went with your husband?

A. Yes, sir.

Q. What was your husband going for?

A. He was going to look at the land.

(Testimony of Lavina I. Gilman.)

Q. What were you to do?

A. Well, I went on a visit and I was to look at my claim, too.

Q. You were each to take up a claim there?

Mr. WALSH.—Objected to as leading.

A. Yes, sir.

Q. Who told you first about the possibility of your being able to take up a claim?

A. Well, sir, my husband said that he had heard something.

Q. He had heard what?

A. We had a right to take up land, and we went up there to use that right.

Q. Do you know where he got his information?

A. No; of course I heard about a letter that was wrote but I never saw it, only my husband.

Q. Did anybody tell you anything about what was in the letter?

A. Yes, sir, my brother told it.

Q. What was that?

A. I don't know, he did not tell it to me, he told it to Mr. Gilman, I don't know what he did tell him, but I know we had this right.

Q. You didn't know what you were going to do when you went up there?

A. Why, went to take land, of course.

Q. What were you going to do with it after you got it?

(Testimony of Lavina I. Gilman.)

A. Sell it if we had a chance to.

Q. That is what you went up there for, to take up land to sell?

By Mr. BICKFORD.—We object to that as being leading and attributing to the witness a motive which she has not yet testified to having.

Q. When were you going to sell it, Mrs. Gilman?

Mr. BICKFORD.—We object to that as calling for a conclusion and not a statement of fact.

A. We could not sell it until we got it, of course.

Q. How did your party go up into the mountains?

A. From our place?

Q. Yes? A. In a wagon.

Q. All the way up? A. Yes, sir.

Q. Who did you meet after you got up into the mountain? A. I went to my mother's.

Q. How long did you stay there?

A. Well, I do not remember, we were there three or four days, though, something like that.

Q. Was your party joined by anybody after you got up there?

A. Well, there were others came there and camped around, but there did not anyone stay at the house because the house was full.

Q. How many camped at that time, just give us the names of as many as you can recollect?

A. Well, there was Mrs. Roll, Mrs. Yarger, Bill Eddy and Mrs. Dildine.

(Testimony of Lavina I. Gilman.)

Q. Those four?

A. Those four; I do not remember any more.

Q. How far was the camp from the house?

A. It was but a very little ways, I should judge about a quarter of a mile.

Q. Have you mentioned all that were in the camp?

A. All that I can remember, there may have been some others that I do not remember, I just visited there one evening.

Q. Was that before you went to see your land?

A. Yes, sir.

Q. When did you see your brother Albert?

A. Well, I saw him when I was up there.

Q. Who took you out to see your claim?

A. My husband.

Q. Anybody else? A. No, sir.

Q. You two were together? A. Yes, sir.

Q. Was that before or after you had seen Albert?

A. Why, that was before and after, too, for he was there.

Q. He was there when you got there?

A. Yes, sir.

Q. Are you positive that Albert did not go along with you? A. Yes, sir.

Q. When you went to look at your claim?

A. Yes, sir.

Q. Just your husband? A. Just my husband.

Q. Do you know how far your claim is from the house?

(Testimony of Lavina I. Gilman.)

A. No, I could not tell, I know I walked from the house up to the claim, I went up a gulch, I should suppose it would be a mile and a half or two miles, I could not tell, I have forgotten that.

Q. You and your husband walked up there?

A. Yes, sir.

Q. And walked together? A. Yes, sir.

Q. Have you ever been up to that particular place before? A. No, sir.

Q. Nor since? A. No, sir.

Q. Well, describe this place that was pointed out to you by your husband, as well as you can, what was it?

A. Well, it was timber land, but it was up on a hill, real rocky and sloped to the south from the side hill.

Q. What they call mountainous, isn't it?

A. Yes, sir, it was in the high mountains.

Q. How long did it take you to look at this place?

A. It took us all forenoon.

Q. Do you mean by that from the time you left your house until you got back?

A. Yes, sir, it was after dinner when we got back.

Q. On this one occasion, the only time you were ever there, nobody else was present except your husband?

A. That is all.

Q. What did you do there?

A. Well, he just took me on the land, he showed me the land.

Q. How long did you stay at your mother's house after you got back from looking at this land?

(Testimony of Lavina I. Gilman.)

A. Well, I could not tell you, but I think we stayed until the next day, I could not be sure.

Q. Then where did you go?

A. We went to Missoula.

Q. Who went with you?

A. Why, my husband and my brother and my brother's wife, all of us four.

Q. Did you understand that your husband made a location at the same time? A. Yes, sir.

Q. Was that near yours?

A. No, it was quite a ways from mine.

Q. Did you go with him when he saw his?

A. No, sir, he went the day before, and he viewed his; he viewed mine and he just went to take me on my land.

Q. Then you and your husband returned down to Missoula? A. Yes, sir.

Q. Went home? A. Filed on our land.

Q. Filed on your land previous to going home?

A. Yes, sir.

Q. Who did the business at the land office at the time of the filing?

A. Well, I think it was a man by the name of Mr. Hershey.

Q. I meant with reference to yourself or your husband, did your husband attend to the business for you?

A. He attended to the business for me.

Q. Did you see any tract of land or any plat that he took with him describing the land, or any papers of any kind? A. No, I do not know as I did.

(Testimony of Lavina I. Gilman.)

Q. Did you see any paper that was in your husband's possession at that time?

A. No, I know that he had a description of the land, but I never saw it.

Q. You know that he had?

A. Yes, I know that he had.

Q. Who gave it to him?

A. I could not tell you, I did not see anybody give it to him.

Q. Don't you know who gave it to him?

A. No, sir.

Q. Didn't he tell you? A. No, sir.

Q. You have no knowledge on that subject?

A. No, sir.

Q. Did you see Mr. Cobban at the time of the filing?

A. No, sir, I think Mr. Cobban was gone.

Q. Who represented Mr. Cobban?

A. Well, I don't know his name.

Q. Did you hear his name at the time?

A. No, I don't know that I did.

Q. Did you meet him? A. Yes, sir.

Q. Where did you meet him?

A. I met him in his office.

Q. Whose office?

A. Mr. Cobban's office.

Q. Would recollect the name if I would suggest it: Catlin, did you ever hear that name before?

A. Yes, sir, I have heard Mr. Catlin's name before.

Q. Was that the name of the man you met?

(Testimony of Lavina I. Gilman.)

A. I think it was.

Q. You met him before you went to file?

A. Yes, sir, we had to borrow the money of him to file with.

Q. So you went directly down from the mountains to Mr. Cobban's office and saw Mr. Catlin?

A. Yes, sir.

Q. Before you filed at all? A. Yes, sir.

Q. Before you had ever gone to the land office?

A. Yes, sir.

Q. Were you present when the talk was had with regard to this money with Mr. Catlin?

A. No, sir.

Q. Where were you?

A. I was attending to my baby.

Q. Whereabouts was that?

A. Well, it was in the office—not in the office but was in the building, I never heard what was said because I had to attend to the baby and I was not around them very much.

Q. While you were busy with the baby your husband was busy with Mr. Catlin? A. Yes, sir.

Q. You say you don't know what took place between them?

A. Well, I understood he was to borrow money off him to file with.

Q. Do you know whether he did or not?

A. Yes, sir.

Q. Tell us all that you know about that?

(Testimony of Lavina I. Gilman.)

A. That is all I know, we just got the money off him, and that we signed a note, that is all I know about it.

Q. Did you see the money? A. Yes, sir.

Q. On that day?

A. Maybe I have gotten that mixed up, maybe we got the money when we went to file, I do not remember.

Q. I am talking about when you went to file?

A. Or the time we proved up.

Q. That is what I am asking you about?

A. Well, I won't say, I don't know.

Q. Then, as I understand you, what you wish to say, is that you know that you got the money from Mr. Catlin, but when you got it you don't know?

A. No, sir, I can't know.

Q. Well, did you have the baby with you?

A. Yes, sir, Mr. Gilman attended to my business because I could not do anything with the baby; the baby was sick.

Q. Did you bring the baby with you when you came down to make your final proof? A. Yes, sir.

Q. The second time, I mean? A. Yes, sir.

Q. Well, then, you filed at any rate with your husband? A. Yes, sir.

Q. That is your signature?

A. That is my signature.

Mr. MAYNARD.—I show witness original statement and she identifies her signature to the same, and in this statement she says that she desires to avail herself of the provisions of the act of Congress entitled, "An act

(Testimony of Lavina I. Gilman.)

for the sale of timber lands, etc., and for the purchase of the east one-half of the northeast quarter and the southwest quarter of the northeast quarter and the southwest quarter of the southeast quarter of section 8, township 14 north, of range 15 west," and that was on the 26th day of July, 1899.

Q. Do you remember of going back again, Mrs. Gilman, on the 29th day of September, to make your final proofs? A. Yes, sir.

Q. Who did you go with?

A. I went with Mr. Gilman, my brother and his wife.

Q. That is George?

A. George P. Jemison; we went to Missoula, and we camped.

Q. You four? A. Yes, sir.

Q. Whereabouts did you camp out in the city of Missoula?

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. On the south side of the river.

Q. How long did you stay in camp there in the city?

A. Well, we camped there, I guess, a couple of days.

Q. And what did you go there for?

A. Went there to prove up our timber file.

Q. Did you have your money there with you at this time?

A. No, Mr. Gilman borrowed it this time when we proved up.

(Testimony of Lavina I. Gilman.)

Q. Come to think about it, you think Mr. Gilman got the money when you went down to prove up?

A. Yes, sir.

Q. You do not remember of having had the money before that, do you? A. No.

Q. What do you know about Mr. Gilman borrowing the money, Mrs. Gilman; was it while you were camping out there?

A. Well, I do not remember very much about it.

Q. You have not much of a recollection on the subject, have you?

A. He done my business and I did not question him any because if I attended to the child I had enough to do.

Q. Well, can you now, Mrs. Gilman, that you have thought about the matter and have come to the conclusion that it wasn't the time of the going down there to prove up that you got this money from Mr. Cobban, recall a single fact or circumstance connected with getting the money? A. No, sir; I don't believe I can.

Q. But you do remember that you went to the land office? A. Yes, sir.

Q. Did you see Mr. Catlin there in Mr. Cobban's office? A. I don't know that I did.

Q. You cannot say as to that?

A. I could not say.

Q. When you went to the land office, you did not have any money then in your pocket, did you, or on your person?

(Testimony of Lavina I. Gilman.)

Mr. BICKFORD.—We object to that as irrelevant and immaterial.

A. I never had any money at all.

Q. Well, did you see anybody have any money?

A. No, sir; I could not swear to that.

Q. But you do remember, do you not, Mrs. Gilman, that after you left the land office that you then went to Mr. Cobban's office?

Mr. BICKFORD.—We object to that as leading.

A. No, sir; I cannot say that I remember I did.

Q. Don't you remember that after you had proved up and after leaving the land office, before you broke camp and went home that you did go to Mr. Cobban's office?

Mr. BICKFORD.—We object to that as leading.

A. No, I cannot say that I did.

Q. What can you say about that, Mrs. Gilman?

A. Well, I cannot say I do not remember what I done after.

Q. Well, you sold your land to Cobban the same day that you proved up, didn't you?

Mr. BICKFORD.—We object to that as leading.

A. I cannot say whether it was the same day we proved up or not.

Q. Have you any recollection at all of conveying your land to Mr. Cobban?

A. I remember signing something in Mr. Cobban's office, but the date I do not remember.

(Testimony of Lavina I. Gilman.)

Q. And you have no recollection as to when that took place? A. No, sir.

Q. Whether it was on this day that you went to prove up or not?

A. No, sir; well, of course, it was the same day or close to that.

Q. It might have been the same day?

A. It might have been; I do not know.

Q. Do you recollect who you went to the office with?

A. I went with my husband.

Q. And you signed something there?

A. Yes, sir.

Q. And how much money did you get?

A. Well, I don't know; I could not tell you; Mr. Gilman got it; I did not get it.

Q. Mr. Gilman got it and he did not divide with you?

A. Not until I got home.

Q. When you got home how much did he give you?

A. Only what I asked for; I asked for a hundred dollars and he gave it to me.

Q. Mr. Gilman, when you got home, gave you a hundred dollars? A. Yes, sir.

Q. That is all you got out of it from the beginning to the end?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Mr. MAYNARD.—I desire to have it appear in the record that I now show the witness the deed of date the

(Testimony of Lavina I. Gilman.)

29th, of September, 1899, and in this deed it appears that Joshua C. Gilman and Lavinia I. Gilman, husband and wife, of Victor, Montana, the parties of the first part and R. M. Cobban of Missoula, Montana, party of the second part witnesseth: that the said parties of the first part for and in consideration of the sum of two thousand dollars ($2,000.00) lawful money, do convey the west half of southwest quarter and the northeast quarter of the southwest quarter and the southwest quarter of the northwest quarter of section 8, township 14 north of range 15 west, and the east half of the northeast quarter and the southwest quarter of the northeast quarter, and the southwest quarter of the southeast quarter of section 8, township 14 north of range 15 west. That this deed was acknowledged before Mr. Wallace P. Smith on the day above written, namely, the 29th of September, one thousand eight hundred and ninety-nine.

Cross-examination.

(By Mr. BICKFORD.)

Q. I believe you said that when you made your final proof, Mrs. Gilman, that you did not see Mr. Cobban?

A. Yes, sir.

Q. You did not see him at that time, did you?

A. I do not know that I saw him.

Q. You had no talk with Mr. Cobban before your final proof? A. No, sir.

Q. You went upon this land yourself and looked it over, to know what kind of land it was?

A. Yes, sir.

(Testimony of Lavina I. Gilman.)

Q. What was it valued for chiefly?

A. Just for the timber.

Q. Just for the timber on it, not for agricultural purposes? A. No, sir.

Q. You were over 21 years of age when you made this filing? A. Yes, sir.

Q. You were a citizen of the United States?

A. Yes, sir.

Q. Believed at that time that you had a right, under the United States land laws, what is known as the Timber and Stone Act, to make a timber and stone entry?

A. Yes, sir.

Q. You satisfied yourself as to the kind of land it was before you made your entry, did you? A. Yes, sir.

Q. At the time when you went to the land office and filed were you making that entry in your own interests?

A. Yes, sir.

Q. From the time when you made your first filing to the time when you made final proof upon it had you bargained or agreed to sell the land to anyone else?

A. No, sir.

Q. Had you at any time made any contract or agreement by the terms of which the title which you might get to this land would go to the benefit of anybody else except to yourself? A. No, sir.

Q. Were you wholly free of obligation to sell the land to any other person? A. Yes, sir.

Q. I will ask you if you are under indictment, are

(Testimony of Lavina I. Gilman.)

you one of the persons who were indicted by the United States grand jury? A. I think I am.

Q. And Mr. Walsh is your attorney in that matter, isn't he? A. I do not know about that.

Q. You know that you have an attorney in the matter?

A. No, sir; I do not know anything about that.

Q. You are not certain about that? A. No sir.

Q. Do you know that Mr. Gilman and some other person, jointly indicted with you, have made arrangements to defend the action? A. No.

Q. You don't know that anybody has? A. No.

Q. Haven't you been told since you were in town that Mr. Walsh is defending these actions?

A. No, sir, I have not been told that.

Q. How did you know about the indictment matter?

A. The indictment?

Q. Yes? A. By the United States grand jury.

A. Yes.

Q. You said you were under indictment?

A. We had to give bonds.

Q. In this final proof of yours you were asked this question by the officers of the land office, "Have you sold or transferred your claim in this land since making your sworn statement, or have you directly or indirectly made any agreement in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person excepting

(Testimony of Lavina I. Gilman.)

yourself?" to which question you answered "No." Is that correct? A. Yes, sir.

Q. That was true at the time when you made the answer? A. Yes, sir.

Q. And question fourteen which is as follows, "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person?" to which you answered, "I do; I am married and purchase this land with my own money, and in which my husband has no interest or claim"; was that answer correct, Mrs. Gilman?

A. Read that over again.

Q. I will separate it; "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use and benefit of any other person?" In answer to this question, you say "I do." Then you say, "I am married and purchase this land with my own money"; that was right, wasn't it?

A. Yes, sir.

Q. Money which you had borrowed?

A. Yes, sir.

Q. "And in which my husband has no interest or claim"; that was right, wasn't it? A. Yes, sir.

Q. The further question was asked you, question number fifteen: "Has any other person than yourself, or has any firm, corporation or association any interest in the entry you are now making, or in the land or in the timber thereon?" to which you answered, "No." That answer was correct, was it? A. Yes, sir.

(Testimony of Lavina I. Gilman.)

Q. And is correct now? A. Yes, sir.

Q. Either you or your husband received from the register or receiver of the land office in Missoula a receipt for the money which you paid for the land, didn't you? A. I don't know.

Q. You didn't see it yourself?

A. No, I did not see it.

Q. You said you were doing business with Mr. Hershey, do you know whether it was Mr. Hershey or Mr. Ranft, the receiver of the land office?

A. No, sir, I am not acquainted with them, I could not tell one from the other.

Q. There is Mr. Hershey over there (indicating Mr. Hershey). Is that the man you did business with?

A. I could not swear it was.

Q. Is that the man, or was it a stouter man than Mr. Hershey? What is your remembrance at this time?

A. I could not tell you.

Q. Do you remember who were your witnesses upon this final proof?

A. No, sir, I do not know that. I have read the paper and knew at the time, but I could not tell you now if my life depended upon it.

Q. Do you know anything about any chance that you might have had to sell this land to anybody else besides to Mr. Cobban, Mrs. Gilman?

A. Well, I know that my sister—we were all kind of looking up to her; she was going to sell her land to somebody else, and she could not do better with any-

(Testimony of Lavina I. Gilman.)

body else but Cobban and she said for us to sell our land to him, we would do better by him.

Q. Then you were not under obligations to sell to Mr. Cobban if you did not want to? A. No, sir.

Q. You satisfied your mind upon that question before you sold your land?

A. Before we sold our land.

Q. I understood your testimony was that you did not sell your land until after your final receipts had been issued to you? A. No, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mrs. Gilman, who is William Eddy?

A. William Eddy, he married a cousin of mine.

Q. Where does he live?

A. He lives about two miles west of us.

Q. Was he up there at the time you made your location?

A. A cousin, I said, it was a niece of mine he married. I made a mistake when I said cousin.

Q. Was he up there?

A. Yes, sir, he was up there.

LAVINIA I. GILMAN.

Subscribed and sworn to before me this fifth day of March, 1902.

HENRY N. BLAKE,
Examiner.

JOSHUA C. GILMAN, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Your name is Joshua C. Gilman?

A. Yes.

Q. You are the husband of the lady that just left the stand? A. Yes, sir.

Q. You have sat here in the Examiner's room while you have heard her testimony, haven't you?

A. Yes, sir.

Q. You came up here yesterday afternoon with your wife? A. Yes, sir.

Q. And who else?

A. Mr. Roll and his wife came with us.

Q. You came here yesterday afternoon?

A. Yes, sir.

Q. Who did you see first? Mr. Walsh here, or Mr. Cobban?

A. Well, I came right directly into this room and I saw neither of them to know; I never saw Mr. Walsh until yesterday, I do not know him, I suppose he was in here, I came right directly in here and Mr. Cobban I did not see until late in the evening.

Q. How late in the evening did you see Mr. Cobban?

A. I don't know just what time it was, after the court adjourned here.

Q. You didn't see him after supper, did you?

(Testimony of Joshua C. Gilman.)

A. Yes, sir.

Q. Whereabouts?

A. He is stopping at the same hotel I am. Saw him there, we both went to the Salvation Army together, I think, last night.

Q. What hotel are you stopping at?

A. At the Cosmopolitan.

Q. Then did he take you to Mr. Walsh's office?

A. No, sir.

Q. You went there?

A. I went there, yes, sir.

Q. Before supper? A. I think it was.

Q. Don't you know—it was yesterday evening?

A. Yes, sir, it was before supper, I think, I am pretty sure it was.

Q. That was not 24 hours ago, haven't you a positive recollection as to whether it was before or after supper?

A. Yes, I am pretty sure it was before supper. We had supper pretty early yesterday afternoon, from the fact that we did not have no dinner, I wouldn't swear positively when I went to his office, whether it was before I went to supper or not, but I think it was before I had.

Q. Do you know whether it was before dark or not?

A. Yes, sir, I do know it was before dark.

Q. Were you there again this morning?

A. Yes, sir.

Q. And the whole matter of this testimony of yours was talked over, wasn't it?

(Testimony of Joshua C. Gilman.)

A. Not that I knew of, I do not know yet what my testimony is liable to be.

Q. Who sent you there, who told you to go there?

A. Well, we went there from the simple fact that he is an attorney of mine and I considered—

Q. How do you consider that?

A. Well, when I was indicted on this charge, he was employed as our attorney.

Q. Who employed him?

A. I guess we jointly employed him.

Q. But don't know whether you did or not?

A. I think we did.

Q. Have you any knowledge yourself?

A. That is my understanding.

Q. Have you any knowledge yourself about it?

A. No, I never have gone right to him and employed him myself.

Q. You never saw him until yesterday?

A. No.

Q. But you were informed that he was one of your attorneys? A. Yes, sir.

Q. And you consulted with him as such?

A. Certainly.

Q. And this subject matter of your testimony here was talked about in his office, wasn't it?

Mr. BICKFORD.—We object to that as leading.

A. I do not think it was.

Q. Nothing said about it?

A. Touching the case was talked about, but there

(Testimony of Joshua C. Gilman.)

was nothing said in regard to my testimony that I know of.

Q. Do you know how you happened to leave your home and go 90 miles from your home up into the mountains? A. Yes, sir.

Q. What did you go for?

A. I went up and took up a Timber and Stone Act.

Q. How did you come to do that?

A. Because I wanted to, I was satisfied I had the right to do it and I went and took it from the fact that I wanted to.

Q. Who told you about it?

A. Well, my brother in law was the first to tell me that there was a chance now to take this timber.

Q. Who is your brother in law?

A. George P. Jamieson.

Q. What were you to do?

A. Why, we were to go up and view our timber claims and file on them.

Q. Then what? A. Then prove up on them.

Q. Then what?

A. Do as we pleased, sell them or keep them, just as we saw fit, I suppose, that is my understanding of it.

Q. You went up there with your wife?

A. Yes, sir.

Q. You went with her alone to point out her claim?

A. Yes, sir, I took her into her claim.

Q. How did you find out where the claim was?

(Testimony of Joshua C. Gilman.)

A. Well, sir, I went out and viewed the lines around my claim and around hers, next day I took her out.

Q. Who was with you?

A. The two Jemisons, Calvin Yarger and William Eddy.

Q. That was the first time you were ever on that land?

A. Yes, sir, that was. We went on to run the lines and view out the land, and we saw the timber.

Q. Now, how many claims were located on that day?

A. We platted out I think, viewed four claims on that day; the claims were viewed for myself and wife, one for George P. Jemison and one for his wife.

Q. Albert was there during the time?

A. Yes, sir.

Q. He did it, didn't he?

Mr. BICKFORD.—Objected to as leading.

A. He showed us the lines.

Q. He showed you the land and showed you the lines?

Mr. BICKFORD.—We object to that as leading.

Q. You had never been there before?

Mr. BICKFORD.—We object to that as leading.

A. No, sir; he had been there and he had also worked for the Government and he knew the lay of the land and all about it and for that reason we got him to show us the land.

Q. These claims had been selected by Albert, hadn't they?

(Testimony of Joshua C. Gilman.)

Mr. BICKFORD.—We object to that as leading.

A. Never had until that day he went with us.

Q. But he took you directly to them, didn't he?

Mr. BICKFORD.—We object to that as leading.

A. He took us over a big scope of country and we picked out our own claims.

Q. But he took you to them?

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. And you never had seen them before nor since?

Mr. BICKFORD.—We object to that as leading.

A. No, sir.

Q. And then how long after you went and viewed this land before you went down to Missoula?

A. Why it was in the course of a day or two, maybe three, I don't know just how long we did stay there.

Q. But before you did it and the next day afterwards you took your wife out to one of these claims and showed her her claim? A. Yes, sir.

Q. Then where did you go?

A. Well, we went home.

Q. Did you file before you went home?

A. Yes, sir.

Q. Did you see Mr. Cobban before you went home, before you went there? A. Before I went home?

Q. Yes? A. Yes, sir.

Q. The first time? A. Yes, sir.

Q. Where did you see him?

A. Saw him in Missoula.

(Testimony of Joshua C. Gilman.)

Q. Had you ever seen him before?

A. Never had.

Q. How did you happen to go to see him?

A. I heard I could borrow money off him, I went to see him about it.

Q. Who went with you?

A. Mr. Jemison.

Q. Which Jemison? A. George P.

Q. Who else? A. My wife, I think.

Q. Who else?

A. His wife.

Q. Your wife, yourself, Jamieson and his wife, all went to Mr. Cobban's office directly upon your coming down from the mountains?

Mr. BICKFORD.—We object to that as leading.

A. Well, I don't know that we went there before we filed or not, but it seems to me that we did, I could not swear positively as to whether we had been to the land office before or not.

Q. Who went with you to the land office?

A. Why us four that took the claims together; all four went to the land office together.

Q. What did you do when you went to the land office? A. Why we filed on our land.

Q. On what land?

A. On this timber and stone claim we are talking about.

Q. Could you remember the description?

A. No, I don't think I could, but it was in section

(Testimony of Joshua C. Gilman.)

four, but now I could not go to work and call off the numbers.

Q. What did you have to aid you when you went to the land office?

A. Well, from my plat that Jameison had I think I drew off a plat of my land and my wife's land and put the numbers on to it so that we would not make a mistake in making the entry.

Q. I want you to be sure about this because this is an important matter to you? A. Yes, sir.

Q. What I want to know is, you say you never saw that land before in your life, nor since?

A. No, sir.

Q. How came you to get the description, how did you have the description at the time you went to the land office?

A. I took it from the plat Albert Jameison had, the township plat.

Q. All you knew about it is what Albert Jameison told you, isn't that so?

Mr. BICKFORD.—Objected to as leading.

A. Well, I knew from the plat he had, with his aid, of course, he aided us in selecting our land, being acquainted with the country, living there for years, and claimed that he had helped run the lines and worked in the Government survey; of course, we trusted to his ability to locate us properly.

Q. And give you a proper description?

Mr. BICKFORD.—Objected to as leading.

(Testimony of Joshua C. Gilman.)

A. Yes.

Q. He gave you the description and you took it to the land office?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. And each of you then made your filings?

Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. You said you had never seen Mr. Cobban or Mr. Catlin or anybody in his office up to this time?

Mr. BICKFORD.—Objected to as leading.

A. I never said I had not seen Mr. Catlin, I have been acquainted with him for fifteen years.

Q. Had you had any business with Mr. Catlin or had any talk with him?

A. He was out of town; I did not go to see Mr. Catlin at that time.

Q. Who did you have the talk with?

A. With Mr. Cobban.

Q. Whereabouts was it? A. In his office.

Q. And you are able to state whether it was before or after you went to the land office?

A. No, sir; I could not say as to that.

Q. Was it on the same day?

A. Yes, sir; I think it was on the same day.

Q. And the persons that you have named were with you? A. Yes, sir.

Q. What did you say to him?

(Testimony of Joshua C. Gilman.)

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I asked him in regard to borrowing what —

Q. Go on now and give us the conversation?

Mr. BICKFORD.—Over the objection of the defendant that it is irrelevant and immaterial.

A. I do not know that I could go to work and tell the conversation in detail, because I could not recollect that; I asked him if it would be so that I could borrow the money of him, provided I needed it when I came to prove up on my land, and he said he thought he could accommodate me.

Q. Go on and tell us all you can recollect?

A. That is all there is to it, as near as I can remember that was said to him.

Q. Did you see him from that time until the time came to prove up? A. No, sir.

Q. Nor Mr. Catlin? A. No, sir.

Q. Either of them?

A. No, sir; I am sure I never saw any of them.

Q. Do you remember where you were in the meantime? A. I was at my home on my ranch.

Q. Did you ever have any correspondence with either of them? A. No, sir.

Q. Did you ever have any correspondence with anybody else, or make application to anybody else?

A. No, sir; not directly myself.

Q. Directly or indirectly?

(Testimony of Joshua C. Gilman.)

A. Mrs. Dildine in Missoula there, we had understood that the Blackfoot Milling Company were buying this timber land, and we could probably sell it to better advantage to them than we could to this Wisconsin company we understood was coming in; she went to see some parties connected with that company, and had some talk with them; they did not want to buy it.

Q. They did not want it?

A. They could not offer any more.

Q. That is what Mrs. Dildine said?

A. Yes, sir.

Q. She was a Jemeison? A. Yes, sir.

Q. So when the time came for you to prove up, how many of you came?

A. Four of us; the same four that went and took the land at the same time.

Q. Now go on and state just what you did when you left home?

A. Well, when we left home we drove with the team down to Missoula and went into camp, and the next day we went to the land office and proved up on our land.

Q. Had you done anything at all with reference to your land between these two dates of your filing and your coming back again? A. No, sir.

Q. What witnesses did you have?

A. Well, I think that George P. Jameison and Calvin Yarger were my witnesses, but I will not say positively; that is my impression, it has been sometime ago, and I cannot recollect it, but I think they were.

(Testimony of Joshua C. Gilman.)

Q. Go on and tell what you did then?

A. Did when?

Q. You say you went and proved up, that is you gave your testimony?

A. Yes, sir; and paid my money and got my receipt.

Q. How much money did you pay in?

A. I think it was four hundred and some odd dollars, I do not remember now just exactly.

Q. From whom did you get that money?

A. Got it from Mr. Cobban.

Q. How long before you went to the land office?

A. Well, we got it the same day.

Q. What time did you go to the land office?

A. I do not remember what time we went to the land office, sometime in the forenoon.

A. If it was the same day you went to the land office, in the forenoon, you got your money from Mr. Cobban the same day?

Mr. BICKFORD.—Objected to as leading.

A. I don't know.

Q. You had not seen Mr. Cobban before this at all?

A. Not from the time we filed until the time we went down and proved up; I did not see him before we proved up.

Q. I mean between the two dates?

A. Never did see him.

Q. Where did you get this money there; did you go to Mr. Cobban's office?

A. Yes, sir; I did not get it from Mr. Cobban himself,

(Testimony of Joshua C. Gilman.)

I think a man by the name of Pond issued the check; I think Mr. Cobban was out of town that day.

Q. Did you see him at all on the occasion of this second visit to Missoula, at the time you proved up, Mr. Cobban? A. No, sir.

Q. You say he was out of town at the time you went, and you went to his office and got the money from Mr. Pond? A. Yes, sir.

Q. He gave you a check for how much money?

A. Something over four hundred dollars; I do not just remember.

Q. Did you turn that check right into the land office?

A. I do not recollect in person or not; if I did not, my attorney did.

Q. Who was your attorney?

A. Mr. Catlin was doing business for me, in the absence of Mr. Cobban.

Q. You cannot say, then, as to whether or not you took this check Pond wrote out, or as to whether Mr. Catlin took it and paid it in?

Mr. BICKFORD.—Objected to as leading.

A. I think Mr. Catlin probably handled it; I think I handed it to him; he was doing the business for me; he was my attorney in the affair.

Q. And your wife was along, too, at the same time.

A. Yes, sir.

Q. And then immediately after you proved up with Mr. Catlin as your attorney, where did you go?

A. I think we went to dinner.

(Testimony of Joshua C. Gilman.)

Q. Where did you go?

A. We went around in Missoula there all that afternoon, think we went home the next day.

Q. You deeded your land to Mr. Cobban that same day, didn't you? A. Yes, sir.

Q. Whereabouts was that done?

A. That was done in Mr. Cobban's office.

Q. How much money did you get for that?

A. For the land, what I got out of the land?

Q. How much did you get when you deeded the land?

A. Why he was to pay me a hundred dollars.

Q. And your wife got a hundred?

A. Yes, sir.

Q. That is all you got out of the transaction from the beginning to the end, wasn't it? A. Yes, sir.

Q. Do you recognize that as your signature?

A. Yes, sir.

Mr. MAYNARD.—The original statement is shown to the witness and he recognizes his signature, and the description contained in the original statement is, "the west half of the southwest quarter, and the northeast quarter of the southwest quarter, and the southwest quarter of the northwest quarter, of section 4, township 14 north of range 15 west." The date of the final proof and acknowledgment is the 29th of September, 1899, and the date of the deed from the witness Joshua C. Gilman and his wife Lavina I. Gilman was on the same day to Mr. Cobban, namely, on the 29th day of September, 1899.

(Testimony of Joshua C. Gilman.)

Mr. BICKFORD.—We object to this and move to strike it out as it is simply a statement of counsel concerning these matters; the witness has not been asked any question, nor has he answered any question with reference thereto.

Cross-examination.

(By Mr. BICKFORD.)

Q. As I understand you, Mr. Gilman, you are a citizen of the United States? A. Yes, sir.

Q. Over the age of twenty-one years?

A. Yes, sir.

Q. Had never previous to this taken up a timber and stone entry? A. No, sir.

Q. Were entitled under the laws of the United States to enter the land under the Timber and Stone Act?

A. That is my belief.

Q. In pursuance of that object you went to the Blackfoot country to make a timber and stone entry?

A. Yes, sir.

Q. At the time when you made this entry, you examined this land, did you? A. Yes, sir.

Q. And you determined in your own mind whether the land was more valuable for timber than for agricultural purposes? A. I did.

Q. What purpose was it more valuable for of the two I have mentioned?

A. Timber only I should say.

Q. Had it any value for agricultural purposes?

A. No, sir.

(Testimony of Joshua C. Gilman.)

Q. Now, at the time when you made your first entry on the land in the United States land office, had you at that time any bargain or agreement by which you were to sell the land to anybody else? A. No, sir.

Q. At the time when you made your final proof on the land, had you made any bargain between that time and the time when you first filed upon it?

A. No, sir, none whatever.

Q. Was there any contract or agreement by the terms of which you were to sell the land to any particular person? A. No, sir.

Q. Or to sell at all, was there any agreement to sell it at all at any time?

A. No, sir, there was never any talk at any time between me and any other party in regard to selling or buying.

Q. I find in your examination in chief you said you got one hundred dollars, I want you to explain to the Court if you will whether that hundred dollars was in addition to the amount of money which you had borrowed with which to pay for the land?

A. Yes, sir, it was.

Q. You were asked the following question when you made your final proof: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in

(Testimony of Joshua C. Gilman.)

whole or in part to the benefit of any person except yourself?" to which you answered, "No, sir," that answer was correct? A. Absolutely.

Q. That answer was correct at the time you made it, and is correct now? A. Yes, sir.

Q. Question fourteen is as follows: "Do you make this entry in good faith for the appropriation of the land to your own use and not for the use and benefit of any other person?" to which you answered, "Yes, sir." Was that answer correct? A. Yes, sir.

Q. Question fifteen is as follows: "Has any other person than yourself, or has any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon?" to which you answered, "No, sir." Was that correct?

A. Yes, sir, that is correct.

Q. As I understand you, you made some inquiry with reference to what timber lands could be sold for, from your sister? A. Yes, sir.

Q. And you learned that the best price that you could get for it was the price which you ultimately received? A. Yes, sir.

Q. That is the reason you sold, was it?

A. Yes, sir, I saw I could not hold the land, you see I could not get the timber up and bring it out on the market, and I did not feel like going to work and mortgaging my ranch and holding it over from time to time paying interest.

(Testimony of Joshua C. Gilman.)

Q. You sold the land rather than paying interest on borrowed money? A. Yes, sir.

JOSHUA C. GILMAN.

Subscribed and sworn to before me this fifth day of March, 1902.

HENRY N. BLAKE,
Examiner.

THOMAS ROLL, being called as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. You were present in the courtroom this morning?

A. Yes, sir.

Q. Did you hear the testimony of your wife?

A. No, sir.

Q. She was on the witness stand, wasn't she?

A. Yes, sir, but I am a little hard of hearing, I could not hear what she testified to.

Q. You are hard of hearing, are you?

A. Yes, sir.

Q. What is your full name?

A. Thomas Roll.

Q. And where is your home?

A. In the Bitterroot.

Q. Up near Victor? A. Yes.

Q. How long have you lived in Montana, Mr. Roll?

(Testimony of Thomas Roll.)

A. I came to Montana in '87.

Q. Came from Kansas? A. Yes.

Q. How old a man are you? A. Born in '55.

Q. And your wife was Laura A. Jameison?

A. Yes, sir.

Q. How many children have you? A. Six.

Q. Six living? A. Yes.

Q. Where did you move to when you came from Kansas? A. Moved to Montana.

Q. Whereabouts in Montana?

A. The Bitterroot.

Q. Where you are living now? A. Yes sir.

Q. You lived on the same place from the time you came to the State? A. Yes, sir.

Q. What have you got down there?

A. Well, I have got a ranch there of 120 acres of land.

Q. What else, Mr. Roll? A. Some stock.

Q. What stock have you got? A. Cattle.

Q. How much stock have you got?

A. I have got seventeen head of cattle and four head of horses, I think.

Q. And farming utensils? A. Yes.

Q. Is that all the land that you have? A. Yes.

Q. And all the personal property?

A. Well, I have got a lot in Victor.

Q. How much is that worth?

A. Well, I don't know exactly, I gave thirty-five dollars for it.

(Testimony of Thomas Roll.)

Q. And your 120 acres, what claim was that, Mr. Roll, how did you take that up?

A. I pre-empted it.

Q. Of course you have got title to it now?

A. Yes, I took up 160 acres first and sold 40.

Q. How much do you regard the cash value of this 120 acres? A. Two thousand dollars.

Q. You think you could sell it for that?

A. I don't know as I could, but I value it at that.

Q. Is there any incumbrance upon it?

A. No, sir.

Q. Any mortgage on it? A. No, sir.

Q. And you have never taken up any other land of any kind? A. No.

Q. Until the time came when you thought you would take up a claim under this Stone and Timber Act?

A. Yes, sir, got the benefit of that.

Q. What was the benefit you expected to get out of that? A. Why, I expected to get all I got.

Q. How much did you know you could get when you started in? A. I didn't know.

Q. Didn't you hear? A. No.

Q. Anybody tell you?

A. Not what I would get.

Q. Anybody tell you what you could expect to get over and above—

Mr. BICKFORD.—We object to that because it is leading, immaterial and irrelevant.

(Testimony of Thomas Roll.)

Mr. MAYNARD.—I will withdraw that question.

Q. You thought you would take up a Stone and Timber Act claim? A. Yes.

Q. You never had thought of it before the time you went into the mountains, had you, much?

A. No, I haven't heard much about it, busy haying.

Q. What else, Mr. Roll?

A. And afterwards I heard there was land there to take up, and so I went up and took my claim when I got time to.

Q. Who did you hear this from, Mr. Roll?

A. Parties who had been up there from the Bitterroot, and got claims.

Q. That is the first you had heard of it?

A. Well, the first I heard was after they went up, and I heard through somebody, I don't just recollect who, that there was timber there to take up, so they went up and got these claims and then I went up.

Q. Let me refresh your recollection, Mr. Roll do you happen to remember of your mother in law writing down to your wife and your sister in law about what Albert was doing up there?

A. Since I come to think, my wife said she got a letter from her mother, I never saw it; we could take timber claims up there.

Q. Albert was up there?

Mr. BICKFORD.—Objected to as leading.

A. I don't recollect about Albert, I know he was there.

(Testimony of Thomas Roli.)

Q. You knew he was up there? A. Yes.

Q. Do you know what he was doing up there?

A. Not until—

Q. Not until you got up there?

Mr. BICKFORD.—Objected to as leading.

A. Not until I heard that Albert was locating up there.

Q. Who did you hear that Albert was locating up there, who did you hear that from?

A. I don't just recollect who I did hear it from, I could not say positively.

Q. How long was it before you went up there after you had heard of Albert's locating up there?

A. Probably a month, something like that.

Q. And if Albert was locating people up there who was he working for, did you know? A. No.

Q. You didn't know who he was working for?

A. No.

Q. But you knew, didn't you, Mr. Roll, what terms he was making with the people he located?

Mr. BICKFORD.—Objected to as leading.

A. I did after I got up there.

Q. And what was it after you got up there, what did he tell you?

Mr. BICKFORD.—Objected to as hearsay.

A. After I got up there I got him to assist me to locate me.

Q. Mr. Roll, you say that after you got up there you

(Testimony of Thomas Roll.)

heard from Mr. Albert about it, tell us about that, please?

A. I went up there and I went out with him and found me a claim, me and him together.

Q. Well, what did he say about it? You said a little while ago after you got up there, you found out about it, now what did you hear?

Mr. BICKFORD.—Objected to as leading.

Q. Tell me, Mr. Roll, what Albert said about it?

A. Why, he said he would locate it.

Mr. WALSH.—He did not say that; we object to anything of that kind, as a declaration of counsel.

A. Only the claim.

Q. He was to locate you and give you a claim?

Mr. WALSH.—Objected to, also, as a declaration of counsel.

Q. All that I meant was that he located you and put you on to a claim?

Mr. WALSH.—We object to that as leading.

A. Put myself on it.

Q. He told you where it was, pointed it out to you.

Mr. BICKFORD.—We object to that as leading.

A. Yes, sir.

Q. You had never been up there before, had you?

A. No.

Q. And you never have been there since?

Mr. WALSH.—We object to all this as leading.

(Testimony of Thomas Roll.)

A. Well, yes, I have been there since, that is, in that neighborhood, that is, in that country.

Q. You have not been up in that neighborhood, that country, I mean in this particular claim?

Mr. WALSH.—We object to that as leading.

A. No.

Q. So that the only time in your life you were ever on this claim was the time you went there with Albert?

Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. Now, do you wish to be understood as swearing here, Mr. Roll, that you did not hear from Albert when he located you up there and you took up this claim as to what you could do with it?

Mr. WALSH.—We object to that as leading.

Q. Do you swear to that?

A. As to what I could do with it?

Mr. WALSH.—We object to that as leading.

(Question repeated.) Now, do you wish to be understood as swearing here, Mr. Roll, that you did not hear from Albert when he located you there and you took up this claim, as to what you could do with it?

A. No, he did not say what I could do with it.

Q. Was Mr. Cobban's name mentioned?

Mr. WALSH.—Objected to as leading.

A. No, sir.

Q. Not mentioned by anybody?

(Testimony of Thomas Roll.)

A. No, sir, not that I heard; I never knew Mr. Cobban until after I made my proofs in the land office.

Q. Was anybody's name mentioned as a person that would buy this land?

Mr. WALSH.—Objected to as irrelevant and immaterial.

A. Not to me.

Q. Did you hear it from anybody?

Mr. WALSH.—Objected to as irrelevant and immaterial.

A. Not any one name in particular.

Q. Well, if there was not anybody's name mentioned in particular, was it generally understood about what you could do with the land?

Mr. WALSH.—We object to that because it is leading, because the question as to what was generally understood cannot be testified to by the witness, and calls for a conclusion, and not the evidence of any fact.

A. There was rumors going around, yes, that you could sell it, there was men that would buy it.

Q. And how much were you to get out of it at that time?

Mr. WALSH.—We object to that because the witness has not stated he was to get anything out of it.

A. I was not to get anything out of it at that time.

Q. You misunderstand me, you are smart enough; what I am asking you now, not at that time, but after you had proved up and got your final receipt.

(Testimony of Thomas Roll.)

(Question repeated by the stenographer. No answer. Question re-put by Mr. Maynard.)

A. I mean by that time the time you had proved up and got your final receipt? A. I got $120.00.

Q. That is what you got for your work in locating this land?

Mr. WALSH.—We object to that as leading, and as making a statement concerning this matter that the witness has not undertaken to make at all, but has stated that he got $120.00 for his land when he sold it.

A. I got $120.00.

Q. Who paid you that $120.00?

A. Mr. Cobban.

Q. Where did he pay you that money?

A. In his office.

Q. When?

A. When I got it, when I went to get it, the day I made my proof.

Q. The day when you made your final proof?

A. Yes, sir, final proof.

Q. That is when you got your $120.00?

Mr. WALSH.—Objected to as leading.

A. No, after I had made my proof—I borrowed the money from him to make the proof, and after I got title I sold it to him for $120.00, that is the straight of it.

Q. And you borrowed the money from him on the same day that you made your final proof?

A. After I made the proof, I got the money.

(Testimony of Thomas Roll.)

Q. After you made your final proof, you went and got the money to pay for the land?

Mr. WALSH.—Objected to as leading.

A. Yes, to pay the Government for the land.

Q. Do I understand that when you went to the office to make your final proof that you did not then have the purchase money in your pocket?

A. No, sir.

Q. And you made your final proof and then went to the office and got the money, and then went back and paid for it? A. Yes.

Q. After you got your receipt you went to his office and sold it and got your $120.00?

Mr. WALSH.—We object to all this as leading.

Q. That is the way it is? A. That is correct.

Q. Was your wife with you at that time?

A. I do not just recollect whether she was or not.

Q. Well, when you went up into the mountains for the purpose of making your location, did your wife go with you? A. No, sir.

Q. When did she go?

A. She went before I went.

Q. Who did she go with?

A. I think she went with Yarger and some of the Eddys.

Q. Then she came back home when you went?

Mr. WALSH.—Objected to as leading.

A. Yes.

(Testimony of Thomas Roll.)

Q. How many times did she go up again after she went up there the first time and came back?

A. Went once, I think.

Q. Once again? A. Yes.

Q. Who did she go with?

A. She went with me and Mrs. Yarger, I think, I am not positive.

Q. What I wish to ask you is as to how many trips she made up into the Blackfoot country in regard to this location of this land? A. Two, I think.

Q. What did she go the second time for?

A. To look at her claim.

Q. Who told her that she must do that?

A. I don't know.

Q. She had been up there the time before, hadn't she?

A. Once.

Q. Did you understand she looked at her claim the first time. A. No.

Q. That she did not?

Mr. WALSH.—Objected to as manifest hearsay the witness having testified that he was not with her at the time she first went to the claim.

A. No.

Q. She went up with you the second time?

A. Yes.

Q. Did she go on the claim the second time when you took her up?

A. That is what she went for.

(Testimony of Thomas Roll.)

Q. Did she go on the claim?

A. I think she did.

Q. Do you know whether she did or not?

A. Well I could not swear that she did.

Q. Why are you unable to swear whether she did or not?

A. Because I am not well enough acquainted with the plat of land or location of land, so much of it looks alike if a man has not got a compass, or is a surveyor and understand numbers, it is pretty hard, he could not hardly swear.

Q. Any piece of land or not?

A. No certain piece, no.

Q. Nobody could do that unless they were a surveyor, could they, or had a large amount of experience in that kind of work?

A. I do not think they could, I meant to show her her claim; I think I showed it to her, but I could not swear it was positively or not.

Q. You had never been up there except the one time you were there yourself?

A. Only when I went with her.

Q. Did you have any personal acquaintance with Mr. Cobban? A. No sir.

Q. Had you ever had any dealings with him at all of any kind? A. No sir.

Q. Never had? A. No, sir.

Q. Nor since? A. Nor since.

(Testimony of Thomas Roll.)

Q. How long was it before this day that you did all that you have testified to that you saw Mr. Cobban?

A. I don't think I ever saw Mr. Cobban until the day I went to prove up.

Q. To make your final proof? A. Yes.

Q. And that is the time you made your final proof, and the time you got your money from him, and the time you deeded over to him?

Mr. WALSH.—Objected to as leading, and as being a statement, and not testimony, given by the witness.

A. Yes.

Q. If you had not seen Mr. Cobban ever before that day, who had you seen relative to the matter of selling the land?

A. Why I had heard that he was loaning money on land, and I went to see him to get the money from him.

Q. Are you able to state as to who you heard that from?

A. No, I am not, I did not keep any memorandum or anything; I did not think it was necessary, did not think I was doing anything I did not have a right to do.

Q. I am not saying anything about that at all; I am just simply asking as to the facts of the case, that is all.

Q. So you are unable to state from whom you heard?

A. Yes, I am; I could not say.

Q. But you just simply went to Mr. Cobban and got the money from him, made your payment, went back and deeded to him and got $100.00?

(Testimony of Thomas Roll.)

Mr. WALSH.—Objected to as leading.

A. One hundred and twenty dollars.

Q. What was the $20.00 for?

Mr. WALSH.—Objected to for the reason that the witness has not testified it was for anything.

A. The $20.00?

Q. What was the $20.00 for?

Mr. WALSH.—Objected to for the reason that the witness has not said it was for anything.

A. I suppose the same as the hundred; it came together.

Q. Did you get $120.00? A. Yes, sir.

Q. In cash? A. Yes, sir.

Q. How much did your wife get?

A. I think she got $115.00.

Q. You had not paid out a cent of money from the beginning to the end, had you, yourself?

Mr. WALSH.—Objected to as leading.

A. I borrowed my own expenses.

Q. You bore your own expenses in going up to the mountain? A. Yes.

Q. Had you done anything else? A. No.

Q. Now, then, how much did you estimate your expense was?

Mr. WALSH.—We object to that because the witness has not testified that he estimated it at all.

A. I did not make any estimation of it at all.

(Testimony of Thomas Roll.)

Q. The $20.00 you got over the hundred would cover all the money you paid out in the expenses?

Mr. WALSH.—We object to that because it is leading.

A. I don't know about that.

Q. You are on oath now, I am asking for your best judgment? A. I think probably it is, yes.

Q. About equally?

Mr. WALSH.—Objected to because it is leading.

A. Yes.

Q. Now, didn't you know all the time that you were to get this $100.00 from Mr. Cobban?

Mr. WALSH.—Objected to as leading.

A. No, sir, I did not.

Q. Never had heard of that before that time?

Mr. WALSH.—Objected to because it is leading.

A. No, not that he would give $100.00, never had any talk.

Q. You understood you could get $100.00 from him?

Mr. WALSH.—Objected to as leading.

A. I did not make any such statement as that.

Q. You said there were rumors going around about being able to get $100.00? A. Yes.

Q. How many of such rumors were there in your best judgment? A. How many of such?

Q. Yes.

A. I could not state that exactly, how many.

Q. Were there a good many?

(Testimony of Thomas Roll.)

A. Different places, yes, in a way.

Q. And you acted on that rumor?

Mr. WALSH.—Objected to because it is leading.

A. I acted on my own judgment, as to what I would do with that land when I got title to it.

Q. That is, you would get $100.00 for it?

By Mr. WALSH.—Objected to because it is leading.

A. I could get $100.00.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Roll, have you ever worked in the woods?

A. No, sir.

Q. You have lived near timber for a good many years? A. Yes, sir.

Q. Was there considerable timber in the Bitterroot country, where you lived, when you went there first?

A. Yes, sir.

Q. Never acquired any timber lands however prior to the time you took this piece up under the Timber and Stone Act? A. No.

Q. What was there, Mr. Roll, if anything, that induced you to desire to take up this timber land at the time you took it up?

A. Why, for my own benefit; there had been timber claims taken up all over the State of Montana and I never got any benefit of anything of that kind, and I thought I had a right to get me a claim and get what I could out of it for my own benefit.

(Testimony of Thomas Roll.)

Q. Was your credit good enough at that time so that you could have borrowed the amount of money necessary to pay for this timber land by mortgaging your ranch or other property? A. Yes, sir.

Q. You could have raised the money with ease?

A. Easy enough.

Q. Why didn't you do that? A. I was afraid.

Q. Afraid of what?

A. To pay interest money on mortgages.

Q. What induced you to sell this timber claim so soon after you made your final proofs on it?

A. Well, I could not see any way that I could dispose of it the way it was located in the mountains, no other way I could get anything out of it; I did not think I ever could get a sawlog off it, it would have cost me a thousand dollars, probably.

Q. How was that, Mr. Roll?

A. Why, it was so rough.

Q. You mean that it would be necessary to build expensive roads and that kind of thing before you could reach the timber to cut it off? A. Yes.

Q. Now, had you made any inquiry or had any of your friends made any inquiries before you sold the land to Cobban as to what you might be able to get for it if you sold it to anyone else? A. I did not.

Q. Had you heard anything concerning the possibility of selling it to anyone else, Mr. Roll?

A. Only as I said before, there was rumors going around that I could sell it.

(Testimony of Thomas Roll.)

Q. Those rumors were afloat at the time you took up the land, were they? A. Yes, sir.

Q. Who, if anybody, was said by these rumors was in the market for the purpose of buying timber lands?

A. Why, I heard talked in different places on the streets by strangers and different parties.

Q. Do you know anybody in that country that has been buying timber lands for some years past?

A. In Missoula?

Q. Yes. A. Why, not in particular, no.

Q. What company operates up in that country there in the Bitterroot, what lumber company?

A. The A. C. M. Company.

Q. The Anaconda Copper Company? Yes.

Q. Did the Blackfoot Milling Company do any lumbering up there?

A. I do not know whether they did or not.

Q. Now, Mr. Roll, when you were going to make your final proof on this land, among other questions you were asked this, "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" to which you answered, "No, sir," was that answer correct? A. Correct, yes, sir.

Q. That is true, was it? A. Yes, sir.

(Testimony of Thomas Roll.)

Q. Then you were asked this question, "Do you make this entry in good faith for the appropriation of the land exclusively for your own use and not for the use of any or benefit of any other person?" to which you answered "Yes, sir," was that correct? A. Yes, sir.

Q. That was true, was it? A. Yes, sir.

Q. You were then asked, "Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making or in the land or in the timber thereon?" to which you answered, "No, sir," is that correct? A. Correct, yes, sir.

THOMAS ROLL.

Subscribed and sworn to before me this fifth day of March, 1902.

HENRY N. BLAKE,
Examiner.

Wednesday morning, March 5th, 1902.

Hearing resumed pursuant to adjournment.

LEONARD BARROTT, a witness called by the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Barrott, what is your name?

A. Leonard Barrott.

Q. What is your age? A. Sixty-five.

Q. Where do you live?

(Testimony of Leonard Barrott.)

A. I am stopping now for a time about eleven miles from Missoula. My property, all that I have, is in Park Addition to Missoula. But Missoula is my postoffice.

Q. What is that property? A. Town lots.

Q. How many?

A. Well, I am supposed to own a third interest in six.

Q. Where are those lots situated?

A. I cannot tell the numbers now, but it is in block five, I think, on Rattlesnake Creek on the east side.

Q. How far from the Florence Hotel?

A. Oh, it is up Rattlesnake Creek a mile and a half perhaps.

Q. Outside of the city limits then?

A. Yes, sir, in Park Addition.

Q. But not in the city limits?

A. No, sir, it isn't considered in the city limits, it is just in the addition.

Q. Are there any buildings on these six lots?

A. Yes, we have a house there partly finished, and a little barn, root-house and a chicken-house.

Q. Who is the owner of the other two-thirds interest?

A. My sister and my niece.

Q. That is all the property that you have?

A. Yes, sir, excepting a horse and an old buggy.

Q. How long have you lived in the city?

A. Ever since 1879.

Q. Where did you live just before moving to your present residence?

(Testimony of Leonard Barrott.)

A. In Iowa. Oh, just before moving to my present residence? In Park Addition, Missoula.

Q. You lived there?

A. Yes, sir, lived there for four years.

Q. Where did you live before that—before the four years that you lived in Park Addition to Missoula?

A. In Gallatin County, Bozeman. I lived most of the time in Bozeman.

Q. What were you doing down there?

A. In Gallatin County?

Q. Yes, sir.

A. Up to the last three years I was a stone mason. The last three years I was there I kept the postoffice.

Q. At what place?

A. At Chestnut, nine miles east of Bozeman.

Q. Who are you living with now?

A. My sister and niece.

Q. What is her name? A. Shobe.

Q. You took up a claim under the Stone and Timber Act, did you, Mr. Barrott? A. Yes, sir.

Q. While you were living near Missoula?

A. Yes, while I was living in Park Addition.

Q. Who did you go with up into the mountains?

A. I think there were six or seven went at the time. I didn't know any of them only Mr. Catlin.

Q. Who? A. Maj. Catlin.

Q. Haven't you ever seen any of the others before that?

(Testimony of Leonard Barrott.)

A. I may have seen them but I wasn't acquainted with them.

Q. Did you find out afterwards who they were?

A. No, sir, I heard their names but I don't remember them. I didn't remember them fifteen minutes afterwards. They were all strangers to me.

Q. Maj. Catlin took you up there did he?

A. I went up with Maj. Catlin.

Q. With the rest of the party? A. Yes, sir.

Q. How did you go? A. By stage.

Q. All went together? A. Yes, sir.

Q. From where did you go? A. From Bonner.

Q. From Bonner?

A. Yes, I went to Bonner by —

Q. Rail?

A. By livery rig.

Q. All of the party went by livery rig, did they?

A. No, just Maj. Catlin and myself went from Missoula to Bonner, and at Bonner I think there were six or seven of us in the party that went.

Q. That went the rest of the way with you?

A. The rest of the way, yes, sir.

Q. How far did you go by stage, this party?

A. Went to Clearwater?

Q. To Clearwater.

A. Yes, sir, to Clearwater.

Q. Then did you get off there?

A. I believe so, I believe they all stopped.

Q. Whereabouts?

(Testimony of Leonard Barrott.)

A. At the Clearwater postoffice. At a little hotel there.

Q. Then what did you do next?

A. Went up into the timber and viewed the land that I took up and stuck my stakes on it.

Q. Then what?

A. Then we came back to Missoula.

Q. And then you came back to Missoula?

A. Yes, I think the whole party came back.

Q. The whole party came back?

A. Yes, sir. The other ones went to other places. I don't know what they done.

Q. But they all finally met again at the postoffice and came back on the stage.

A. I think they did come back on the next day.

Q. Was Maj. Catlin with you on your return?

A. Yes, sir, I had Major Catlin along as my witness.

Q. And he came back with the party?

A. Yes, sir, he came back with the party.

Q. With the rest of you?

A. I am not positive whether all the rest of them came back or not.

Q. You know that most of them did?

A. Yes, sir, some of them did, I know. I know there was quite a number of them. It was something that didn't interest me, but the other parties did. I paid very little attention to them. Didn't form their acquaintance or talk with them at all.

(Testimony of Leonard **Barrott.**)

Q. Then what did you do when you landed at Missoula?

A. Why in a few days I came up here to Helena and made my filing on the land.

Q. Who came with you?

A. Mr. Catlin and Mr. Griswold and another party that I cannot recall his name.

Q. You don't remember his name?

A. No, I think I had three witnesses, Major Catlin and Mr. Griswold were my principal witnesses.

Q. Then what did you do?

A. Went back to Missoula.

Q. Went back to your home? A. Yes, sir.

Q. Then what did you do after that, if anything, relative to this matter?

A. When the time came why I came up here to Helena and proved up on the land and paid my money to the government.

Q. Who came with you?

A. My witnesses, Major Catlin and Mr. Griswold and the other party. I think there was three witnesses altogether.

Q. But you don't know who the other party was?

A. No, indeed, I do not. of course I saw the man. He was a stranger but I don't remember. They were taking up land, too, I think at the same time. I cannot recall the name of this party.

Q. Then after you made your final proof what did you do then?

(Testimony of Leonard Barrott.)

A. Why when I got my papers I sold out to Mr. Cobban.

Q. When?

A. I think it was some two or three weeks after I proved up.

Q. Where were you when you sold out to Mr. Cobban? A. In Missoula.

Q. Whereabouts?

A. I think I went to his office once, and I have been to his house once or twice, and I also met him on the road between his house and his office at different times.

Q. I didn't ask you that at all.

A. What is that?

Q. I didn't ask you that. I asked you where you were when you sold it to Mr. Cobban, in Missoula?

A. Well, I would judge that it was at his office or at his house. It was either at his house or at his office. I don't remember which.

Q. What did you get from him when you sold out?

A. I got about a hundred dollars over and above all my expenses in taking up the land.

Q. Do you remember how much you did get over a hundred dollars?

A. I don't think I got any. I think I got this hundred dollars over and above my expenses.

Q. How much were your expenses?

A. In the neighborhood of twenty dollars.

Q. I show the witness the original stone and timber

(Testimony of Leonard Barrott.)

statement. And I ask you, Mr. Barrott, if that is your signature? A. That is.

Q. From this statement I read that on the first day of July, 1899, Leonard Barrott of Missoula applied for the purchase of the east half of the northwest quarter and the northwest quarter of the northeast quarter, and the northeast quarter of the southwest quarter, being lots two and three, and the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section six, township 15, N. R. 14, west. This was made before Mr. Greene, the register of the land office here on the first day of July.

By Mr. WALSH.—We move to strike out the statement of counsel for the reason that the same is a statement and not a question put to the witness, which calls for an answer from him.

Q. I now show the witness the final proof that he made at the time of the making of his final proof. I ask you, Mr. Barrott, if you recognize this as your signature?

A. That looks like my signature.

Q. I read from the original testimony of the claimant signed by him, and sworn to on the 14th day of September, 1899, before Mr. Greene.

By Mr. MAYNARD addressing the Examiner.—I understand that all of these entry papers if your honor please, these records in each of these cases have been offered in evidence.

(Testimony of Leonard Barrott.)

By Mr. WALSH.—I understand it so.

Q. This was on the 14th of September, 1899, was it not Mr. Barrott? A. Yes, sir.

Q. And the witnesses in that case were Mr. Chauncey L. Griswold and Mr. John B. Catlin?

A. Yes, sir.

Q. Do you know how much money was paid for this land?

A. Somewheres in the neighborhood of four hundred dollars. I got my price.

Q. Who paid this money into the land office?

A. Mr. Catlin.

Q. Who received the receiver's final receipt?

A. I received it.

Q. Was it delivered to you?

A. I cannot call to mind now just how that come. I think that I had Mr. Catlin attend to it for me and I think it came to me with some others. I am not positive how it came. I wouldn't like to state exactly how it did come. I cannot recall it to mind.

Q. I show the witness the certified copy of his deed which has been offered in evidence in this case, and in which it appears that four days after you made your final proof, and on the 18th of September, 1899, you conveyed to Mr. Cobban this land?

A. Mr. R. M. Cobban, yes, sir.

By Mr. WALSH.—We move to strike out the state-

(Testimony of Leonard Barrott.)

ment of counsel for the reason that it asks no question of the witness.

Q. You say that Mr. Catlin paid money into the land office—the purchase price? A. I believe so, yes.

Q. And all the money that you received from the beginning to the end was the one hundred dollars and your expense money?

By Mr. WALSH.—We object to that as being leading.

A. A hundred dollars over and above expense money.

Q. Who—did you pay any expense in going to Missoula, and in going up to the mountains?

By Mr. WALSH.—We object to that as leading.

Q. You didn't pay out anything did you, Mr. Barrott?

By Mr. WALSH.—We object to that as leading.

A. I don't think I did.

Q. You didn't pay any expenses at all did you?

A. Yes, I paid out eighteen dollars that I had, to pay expenses with.

Q. Had eighteen dollars? Who did you get the eighteen dollars from?

A. I got it from the government.

Q. How did you spend the eighteen dollars?

A. I spent it on this land.

Q. Just tell how.

A. In paying the expenses one way and another.

(Testimony of Leonard Barrott.)

Q. Well, can you recall any of the items of that expense?

A. Well, for stage fare and for railroad fare, and hotel bills.

Q. Well, you say that you went with Maj. Catlin from Missoula up to Bonner. A. Yes, sir.

Q. Did you pay that?

A. I paid that back to them. I had to pay it back.

Q. He charged it up to you?

A. Yes, sir.

Q. But you didn't pay it out yourself?

A. No, I didn't pay it myself at that time.

Q. When did you pay it out, at any time?

By Mr. WALSH.—We object to that as being leading and further upon the ground that it is irrelevant and immaterial.

A. Yes, sir.

Q. With the understanding that you were to be allowed that on the sale?

A. Yes, when I paid it out.

Q. That is, when you paid it out?

By Mr. WALSH.—We object to that as being leading and further upon the ground that it is irrelevant and immaterial.

A. Yes, sir.

Q. And what was charged up to you as expenses, was all credited to you at the time of the sale.

(Testimony of Leonard Barrott.)

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial and leading.

A. Not all of it, just the stage fare.

Q. Up to the mountains, up to Clearwater and back?

A. Yes, sir.

Q. Who paid your railroad fare?

A. My railroad fare I paid myself, and my hotel bill I paid myself.

Q. But you came with Major Catlin?

By Mr. WALSH.—We object to that as leading.

A. Yes, sir.

Q. From Missoula here? A. Yes, sir.

Q. But you didn't borrow the money from him?

By Mr. WALSH.—We object to that as leading.

A. No, sir.

Q. And as I understand you with the single exception of the railroad fare up to the land office up here, and the hotel bills that is all the money you paid out.

By Mr. WALSH.—We object to that as leading.

A. Yes, sir, at that time.

Q. But you never did pay out any except what you collected.

By Mr. WALSH.—We object to that as leading.

A. No, sir.

Q. And the only money that you received in any way was the money you received at the time of the sale of the claim?

(Testimony of Leonard Barrott.)

By Mr. WALSH.—We object to that as being leading and further upon the ground that it is irrelevant and immaterial.

A. Yes, sir, that is the only money that I received from Mr. Cobban.

Q. Now, how did you happen to go up into the mountains with Major Catlin?

A. Went up there for the purpose of taking up this piece of land.

Q. Who did you go up to look at this piece of land with? A. Major Catlin and Mr. Griswold.

Q. They took you to the location, did they?

A. Yes, sir, Mr. Griswold knew the corners.

Q. You had never been up there before, had you?

A. Yes, sir.

Q. Had you been to this particular piece of land before?

A. No, sir, but I had been up in that country and knew there was some good timber lands there.

Q. But aside from this general knowledge that you had, you hadn't been to this particular piece of ground?

A. No, sir.

Q. And that was the next day after you got up to the Clearwater as I understand you? A. Yes, sir.

Q. And you went out at what time in the morning?

A. I didn't take note of the exact hour, but I think it was about eight o'clock.

(Testimony of Leonard **Barrott.**)

Q. And you went with Major Catlin and Mr. Griswold? A. Yes, sir.

Q. Anybody else?

A. It seems to me that there was another party along, but I cannot tell for sure. There was three of us I know, Mr. Catlin and Mr. Griswold because Mr. Griswold knew the survey and we depended upon him to show us the corners.

Q. What time did you get back to the hotel?

A. I cannot remember.

Q. Did you get back before or after dinner?

A. It is my impression that it was after two o'clock when we got back.

Q. What is your best judgment as to the distance that your location was from the hotel?

A. Well, from the length of time it took to ride up horseback I should think it was some six or eight or perhaps ten miles. Somewhere about on an approximate of eight miles.

Q. You three went on horseback?

A. Yes, sir.

Q. What was the character of the country there?

A. Pretty rough and mountainous.

Q. Well, what did you do when you rode up to the place that Mr. Griswold pointed out?

A. Saw the corners, and looked the land over and the timber.

Q. And then came back? A. Yes, sir.

(Testimony of Leonard Barrott.)

Cross-examination.

(By Mr. BICKFORD.)

Q. You are a citizen of the United States, Mr. Barrott? A. I have been for sixty-five years.

Q. Had you ever taken up a timber claim before?

A. No, sir.

Q. You are one of those qualified to take up one hundred and sixty acres of land, aren't you?

A. So I understand it.

Q. You made an examination of this land, did you not, at the time you went upon it, for the purpose of ascertaining whether the land was more valuable for timber than for other purposes?

A. I did, to the best of my judgment.

Q. Well, what was your judgment with reference to the land and its value?

A. That it was worth nothing only for the timber there is on it.

Q. Did you make an estimate as to the quantity of timber that was on the claim?

A. No, just simply looked it over.

Q. And the quality of it?

A. Only just looked it over from what little experience I have had in lumber and getting timber out up in the mountains.

Q. You said in your examination in chief that you had received eighteen dollars from the government?

A. Yes, sir.

Q. In what way did you receive that, Mr. Barrott?

A. My pension.

(Testimony of Leonard Barrott.)

Q. For what was the pension?

A. For services in the Union Army.

Q. For what time?

A. From sixty-one to sixty-three.

Q. I will ask you to state whether or not you had known Mr. R. M. Cobban for any considerable length of time prior to going into the Blackfoot country to take up timber claims?

A. I moved into that neighborhood in June, 1878, I believe. No, 1898.

Q. And how long had you known Mr. Cobban?

A. I got acquainted with Mr. Cobban shortly afterwards.

Q. How soon afterwards?

A. I think the next spring that I moved there. That would be in the spring of 1899. Either the spring of 1898 or 1899.

Q. You knew he was in the real estate and loaning business? A. At that time, yes, sir.

Q. You knew him personally? A. Yes, sir.

Q. I will ask you to state whether or not you had ever had any talk with Mr. Cobban about taking up a timber and stone entry before the time that you made your claim?

A. I had a talk with him two or three times.

Q. Where were you when you had those conversations?

A. Both at his house and at his office, and on the road between his office and his house.

(Testimony of Leonard Barrott.)

Q. Did you ever make any bargain with him with reference to a timber and stone entry? A. No, sir.

Q. Did he ever ask you to make a timber and stone entry?

A. No, sir. I asked him if he would buy one of me if I would make it.

Q. What did he say to that?

A. He said he wouldn't make any talk on it until he saw whether I took up a claim or not.

Q. When was this conversation that you speak of?

A. It was somewhere along in June.

Q. Of what year? A. Of the same year.

Q. 1898 or 1899?

A. The same year that I filed on it, whichever it was.

Q. Wasn't it in 1899, the time when these filings were made? A. Yes, it was in 1899.

Q. Did you have more than one conversation with him regarding these matters, Mr. Barrott?

A. Yes, sir; I had two or three.

Q. Were these conversations all of the same import?

A. In regard to his buying the claim?

Q. Yes.

A. He absolutely refused to talk of buying from me until I had secured a claim.

Q. Until you had made final proof, do you mean?

A. Yes, sir; until I had made my final proof.

Q. Now, I will ask you to state whether or not you had, prior to making your final proof upon this land, made any bargain or agreement or contract in writing

(Testimony of Leonard Barrott.)

or otherwise, by which you obligated yourself to sell this land that you had entered under the Stone and Timber Act, to any person whomsoever? A. No, sir.

Q. Now, at the time when you made your first filing upon this land on the first day of July, 1899, did you apply to purchase the land on speculation?

A. I did not at that time.

Q. Did you apply for it to appropriate it to your own use? A. Yes, sir.

Q. Had you at that time directly or indirectly made any agreement or contract to sell the land after you had acquired title from the government?

A. No, sir.

Q. Now, you were asked upon your final proof the following question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?" to which you answered, "I have not."

A. Yes, sir.

Q. Was that answer true, Mr. Barrott?

A. That answer was true; yes, sir.

Q. You were also asked the following question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the

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use or benefit of any other person?" to which you answered, "I do." A. Yes.

Q. Now, was that answer true?

A. That is correct; yes, sir.

Q. The following question was also asked you. "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making or in the land, or in the timber thereon?" to which you answered, "No." Was that answer true?

A. Well, I don't know that I understand the fact of my borrowing the money of Mr. Cobban and expecting when I got title to it to secure him to the land for what money I got in that case.

Q. No, was that true, then?

A. It was then.

Q. The question was, has any person other than yourself any interest in the entry you are making, and you answered, "no." A. Yes, sir.

Q. Is that answer correct and true?

A. That is correct. As I say, providing I hired the money from Mr. Cobban, didn't implicate it in that question.

Q. Well, that is the question of law to be determined by the court from the facts as you state them.

A. Yes, sir.

Q. You, as I understand from your last answer, borrowed the money with which to make this entry.

A. The most of it; yes sir.